5-423

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 334. 75

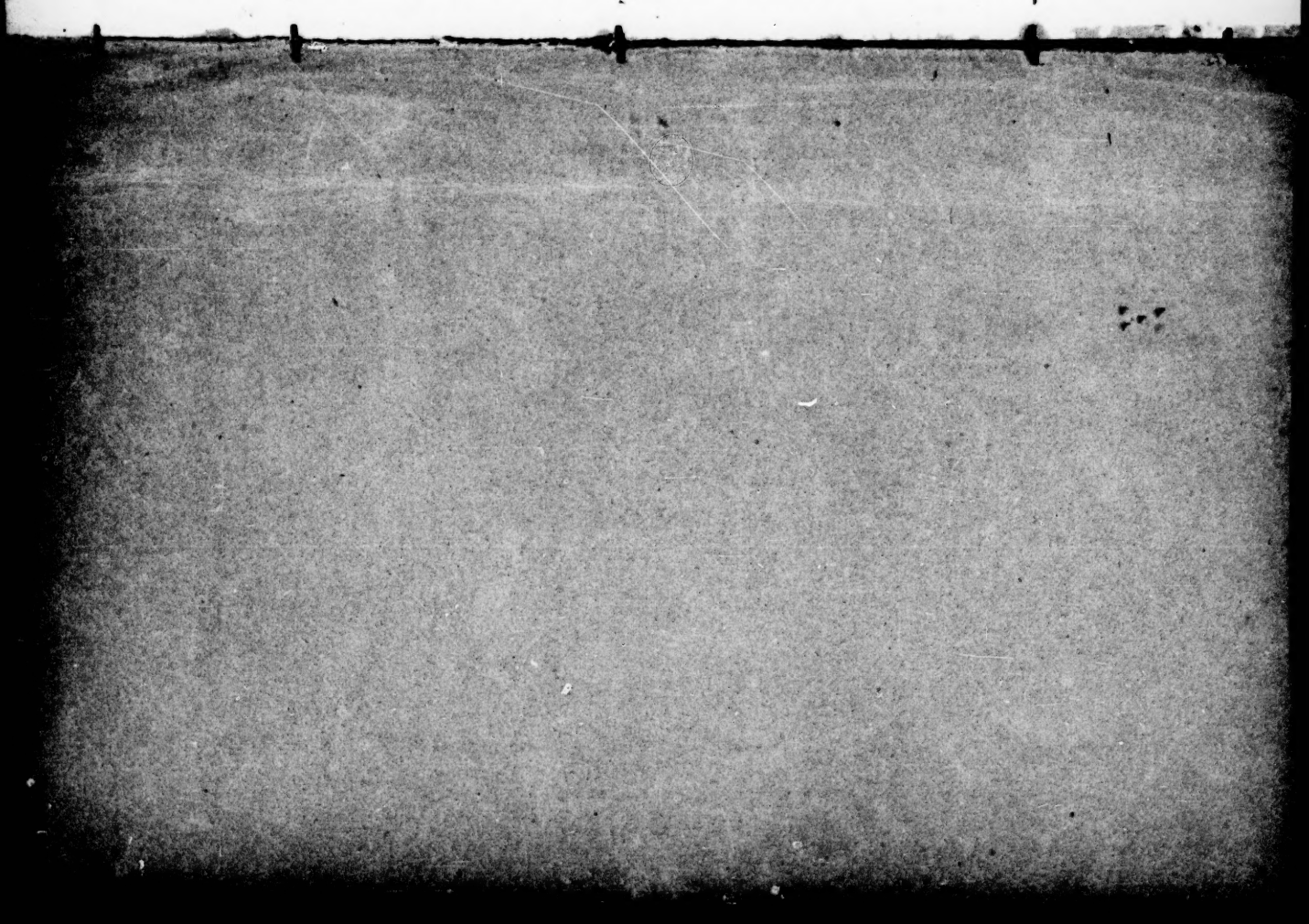
TIPTON COUNTY, PLAINTIFF IN ERROR,

vs.

THE ROGERS LOCOMOTIVE AND MACHINE WORKS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 27, 1877.



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1 UNITED STATES OF AMERICA,
Western District of Tennessee:

In the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit.

Proceedings had in said court, at a regular term thereof, begun and held for its Nov. term, A. D. 1876, at the United States court rooms in the city of Memphis, on the days hereinafter mentioned, in the following cause:

ROGERS LOCOMOTIVE & MACHINE WORKS, plaintiff,
vs
TIPTON COUNTY, TENNESSEE. } No. 1693.

2 *Declaration.*

In the circuit court of the United States for the western district of the State of Tennessee.

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY, DEFENDANT.

The plaintiff, a corporation created under and by virtue of the laws of the State of New Jersey, having its situs & chief business place at Patterson, New Jersey, & having full power to sue and be sued, &c., sues the defendant, the county of Tipton, a corporation created by the laws of the State of Tennessee, sitting in the western district of the State of Tennessee, and within the jurisdiction of this honorable court, on its fifty (50) bonds for five hundred dollars ($500.00) each, numbered 251 to 300, and now here to the court shown, both inclusive, made by the county of Tipton under & by lawful authority to it granted by the State of Tennessee, on the 1st day of Jan'y, 1869, & due Jan'y 1st, 1873,
with six per cent. interest from January 1st, 1869, to the Missis-
3 sippi River Railroad Company, or bearer, which bonds were delivered to said railroad company on 21st day of July, 1869, such bonds upon their face in express terms being transferable by delivery in due course of trade, came into the possession & ownership of the plaintiff, & although long since due with interest, yet remain unpaid, wherefore he sues.

HUMES & POSTON,
Atto's for Plaintiff.

(Endorsed:) 1693 (2). In the circuit court of the United States for western district of Tennessee. Rogers Locomotive and Machine Works vs. Tipton County, Tenn. Declaration filed March 10th, 1874. H. E. Andrews, clerk. Humes & Poston, atto's.

4 Know all men by these presents, that Rogers Locomotive and Machine Works, principal, and D. H. Poston, surety, held and firmly bound unto Tipton County in the sum of two hundred and fifty dollars, to be void on condition that said Rogers Locomotive and Machine Works do pay and satisfy all costs that may accrue in that behalf in the prosecution of a suit this day commenced by it in the circuit court

of the United States for the district of West Tennessee, at Memphis, against said Tipton County, on failure of the plaintiff to prosecute its said suit with effect, and also on failure of the defendant, if convicted, to pay said costs, and we agree that judgment on motion without notice may be rendered against us for the same.

Witness our hands and seals this 10th day of March, 1874.

ROGERS LOCOMOTIVE & MACHINE WORKS,
Per HUMES & POSTON. [SEAL.]
D. H. POSTON, *Surety.*

5 The President of the United States to the marshal of the district of West Tennessee, greeting:

You are hereby commanded to summon Tipton County, in the State of Tennessee, if to be found within your district, to appear before the judge of the circuit court of the United States, in the sixth circuit, for the district of West Tennessee, at Memphis, on the 4th Monday in May next, and then and there to answer Rogers Locomotive and Machine Works of a plea that it owes to and detains from said plaintiff $25,000, &c. Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, the 10th day of March, 1874.

[L. S.] H. E. ANDREWS, *Clerk.*

6 (Endorsed:) No. 1693. Rogers Locomotive and Machine Works vs. Tipton County. Summons issued 10th day of March, 1874. H. E. Andrews, clerk.

Executed by making known the contents & delivering a copy hereof and also of the declaration herein to John T. Douglas, esq., chairman of the county court of Tipton County, Tennessee, April 14, 1874.

L. B. EATON,
U. S. M.,
S. R. SIMPSON,
Deputy.

HUMES & POSTON,
Attorneys.

Ret'd & filed April 16th, 1874.

H. E. ANDREWS, *Clerk.*

7 *Demurrer.*

In the circuit court of the United States for the western district of the State of Tennessee. May term, 1874.

ROGERS LOCOMOTIVE & MACHINE WORKS
vs.
TIPTON COUNTY.

The said defendant, by its attorney, says that the said declaration is not sufficient in law, and the defendant shows to the court the following causes of demurrer to the said declaration, that is to say:

First. For that the plaintiff hath not brought into court or made profert in his said declaration of the said supposed bonds therein mentioned, or any or either of them, or shown any excuse for the omission so to do.

Second. That the plaintiff in the declaration filed in this case does not show, state, or aver any sufficient or lawful authority in any person, persons, or body corporate for the making, execution, or delivery of said supposed bonds in said declaration mentioned, or any or
8 either of them, to Mississippi River Railroad Company, or to any other person or persons or body corporate for said railroad company.

Third. That said declaration does not state, show, or aver that said bonds or any or either of them were made, executed, or delivered by any person, persons, corporation, or body corporate authorized or empowered to make, sign, execute, or deliver the same to the said Mississippi River Railroad Company or to any other person, persons, or body corporate for said railroad company.

Fourth. That said declaration does not show, state, or aver that said county of Tipton made, issued, or delivered said supposed bonds or any or either of them to said Mississippi River Railroad Company by virtue of any law authorizing the same to be done, or by virtue of any rightful or legal authority whatever.

Fifth. Said declaration does not charge, aver, or state any promise, agreement, or undertaking on the part of the defendant (because
9 of the supposed making and delivery of said supposed bonds or any or either of them) to do or to perform anything, or to omit the doing or performance of anything by which any cause of action hath accrued against these defendants in favor of the plaintiff.

Sixth. Said plaintiff in stating and averring in their said declaration that said supposed bonds were "made by the county of Tipton" (meaning this defendant) "under and by lawful authority to it granted by the State of Tennessee," has averred, charged, and stated only a conclusion of law.

Seventh. Said plaintiff in his said declaration has stated and averred only a conclusion of law in averring that said supposed bonds were "made by the county of Tipton" (meaning by "the county of Tipton" this defendant) "under and by lawful authority to it granted by the State of Tennessee," when in fact said plaintiff should have charged, stated, and averred any authority or facts, or supposed facts, which, by law, authorized, permitted, or required this defendant to make, execute, or deliver said supposed bonds or any or either of them
10 in the declaration mentioned to said Mississippi River Railroad Company, or to bearer, or to any other person for said railroad company.

PEYTON J. SMITH,
Att'y for Tipton County.
ETHERIDGE & EDWARDS,
For Def't.

(Endorsement:) No. 1693. U. S. circuit court, western district of Tenn. Rogers Locomotive and Machine Works vs. County of Tipton. Demurrer. Filed the 9th day of June, 1874. H. E. Andrews, clerk.

11 UNITED STATES OF AMERICA,
Western District of Tennessee:

Further proceedings had in the said court during its regular May term, A. D. 1874, on, to wit, the 29th day of September, A. D. 1874, in the following cause:

ROGERS LOCOMOTIVE WORKS, PLAINTIFF,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1693.

In this cause the court being of opinion that the allegation of "profert" is so indistinctly written as to require to be distinctly written, it therefore sustains the demurrer upon this ground, and gives leave to the plaintiff to amend the declaration by inserting the words "now here to the court shown." The court is of opinion that the second, third, fourth, fifth, sixth, and seventh causes for demurrer assigned by
12 defendant are insufficient in law, and therefore orders that said second, third, fourth, fifth, sixth, and seventh causes of demurrer assigned by defendant be overruled.

The defendant excepts to so much of the judgment of the court herein as overrules the demurrers or causes of demurrer, as aforesaid.

13 *Pleas.*

Circuit court of the United States, district of West Tenn. Term 1874.

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY.

The defendant for plea says that the bonds (so called), and each and all of them, upon which the plaintiff's action is founded, were not, nor was either of them, executed by the defendant or by any one authorized to bind the defendant in the premises.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

The affidavit required by law to the plea of non est factum is expressly waived in the foregoing case.

HUMES & POSTON,
For Pl'tf's.

2. And for a further plea in this behalf the said defendant, by its attorney, says that the said supposed bonds in the plaintiff's declaration mentioned, and each and all of said supposed bonds, are not the act and deed of this defendant, and of this said defendant puts itself upon the country.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

And the pl'tf doth the like.

HUMES & POSTON,
Atto's for Pl'tff.

14 The affidavit required by law to the plea of non est factum is hereby expressly waived in this case.

HUMES & POSTON,
Atto's for Pl'tff.

3. And for a further plea in this behalf said defendant says it did not undertake and promise as the plaintiffs in their declaration have alleged.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

4. Plea.—And for a further plea in this behalf the said defendant says that the said defendant does not owe the plaintiffs said sum or sums of money in the plaintiff's declaration mentioned, or any or either of them, or any part thereof, and of this the defendant puts itself upon the country.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

And the pl't'f doth the like.

HUMES & POSTON,
Atto's for Pl't'f.

As to the 1st plea of non est factum, above pleaded, pl't'ffs say that the bonds in the declaration mentioned, & each of them, are the act & deed of def'ts, and this pl't'fs pray may be inquired of by the country.

HUMES.

15 And as to the replication of the plaintiff to the defendant's first plea of non est factum above pleaded, in which the plaintiff put himself upon the country, the defendant doth the like.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Def't.

(Endorsement:) 1693. Rogers Locomotive Machine Works vs. Tipton County. Pleas.

Filed in open court by leave of the court on this the 30th of Sept., 1874.

H. E. ANDREWS, *Clerk*,
By L. H. PILLSBURY, *D. C.*

16 *Pleas.*

Circuit court of the United States, district of West Tenn. Term 1874.

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } (4.)

1. The defendant for pleas says that the bonds (so called), and each and all of them, upon which the plaintiff's action is founded, were not, nor was either of them, executed by this defendant, or by any one authorized to bind the defendant in the premises.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

The affidavit required by law to the plea of non est factum is expressly waived in the foregoing case.

HUMES & POSTON,
For Pl'tff.

2. And for a further plea in this behalf the said defendant, by its attorney, say' that the said supposed bonds in the plaintiff's declaration mentioned, and each and all of said supposed bonds, are not the act and deed of this defendant, and of this said defendants puts itself upon the country.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

17 And the pl't'f doth the like.

HUMES & POSTON,
Att's for Pl'tff.

The affidavit required by law of non est factum is hereby expressly waived in this case.

HUMES & POSTON,
Atto's for Pl'tff.

3. Plea.—And for a further plea in this behalf said defendant says it did not undertake and promise as the plaintiffs in their declaration have alleged.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

4. Plea.—And for a further plea in this behalf the said defendant says that the said defendant does not owe the plaintiffs said sum or sums of money in the plaintiffs' declaration mentioned, or any or either of them, or any part thereof, and of this the defendant puts itself upon the country.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

And the pl't'ff doth the like.

HUMES & POSTON,
Atto's for Pl'tff.

18 As to the 1st plea of non est factum, above pleaded, pl't'ffs say that the bonds in the declaration mentioned, and each of them, are the act and deed of def'ts, and this pl't'ffs pray may be enquired of by the country.

HUMES.

And as to the replication of the plaintiff to the defendant's first plea of non est factum, above pleaded, in which the plaintiff puts himself upon the country, the defendant doth the like.

PEYTON J. SMITH &
ETHERIDGE & EDWARDS,
Attorneys for Defendant.

(Endorsed:) 1693. Rogers Locomotive and Machine Works vs. Tipton County. Pleas.

Filed in open court by leave of the court on this the 30th of Sept., 1874.

H. E. ANDREWS, *Clerk*,
By L. H. PILLSBURY, *D. C.*

19 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1874, at the Federal court-rooms in the city of Memphis, on, to wit, the 18th day of December, 1874, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE WORKS, &c.,
vs.
TIPTON COUNTY. } 1693.

Ordered that this cause be continued to the 2d Tuesday in January, 1875.

20 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court begun and held for its November term, A. D. 1874, at the Federal court rooms in the city of Memphis, on, to wit, the 15th day of March, 1875, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693.

This cause came on to be heard this day, and thereupon on motion came a jury of good and lawful men, to wit, J. W. Tarkington, H. Harmon, W. C. Adams, W. Richards, J. B. Mills, William Westcott, W. C. Chamness, F. M. Cude, James Reavis, William Humphry, James Batten & James M. Jenny, who being duly elected, tried and sworn well and truly to try the issues joined herein and a true verdict to render, enter upon their duty aforesaid, and there not being time to conclude the trial on to-day, the same is continued until to-morrow.

21 UNITED STATES OF AMERICA,
Western District of Tennessee:

Further proceedings had in the said court, during its regular November term, A. D. 1874, on, to wit, the 16th day of March, A. D. 1875, in in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS,
plaintiff,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1693.

Came on this cause to be further heard, and came also the jury heretofore empanneled in the cause, and the trial of the same was resumed, and there not being sufficient time to complete the same on to-day, it is continued till to-morrow.

22 UNITED STATES OF AMERICA.
Western District of Tennessee:

Further proceedings had in the said court, during its regular November term, A. D. 1874, on, to wit, the 17th day of March, A. D. 1875, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS, plaintiff,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1693.

Came on this cause to be further heard, and came also the jury heretofore empanneled herein, and thereupon the trial hereof was resumed, and there not being sufficient time to conclude the same on to-day, the same is continued till to-morrow morning.

23 UNITED STATES OF AMERICA,
Western District of Tennessee:

Further proceedings had in said court, during its regular November term, A. D. 1874, on, to wit, the 18th day of March, A. D. 1875, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS, plaintiff,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1693.

Came on this cause to be further heard, and came also the jury heretofore empanneled in this cause, and thereupon the trial of the same was resumed, and there not being sufficient time on to-day to conclude the same, it was continued till to-morrow morning.

24 UNITED STATES OF AMERICA,
Western District of Tennessee:

Further proceedings had in the said court during its regular November term, A. D. 1874, on, to wit, the 19th day of March, A. D. 1875, in the following cause,

ROGERS LOCOMOTIVE AND MACHINE WORKS, plaintiff,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1693.

This cause came on for further hearing and argument of counsel, and came also the jury heretofore empanneled in this cause, and after having listened to the evidence in the case, heard the argument of counsel, and received the charge of the court as to the laws to this cause appertaining, the jury retired to their room to consider upon the matter given them in charge, and having been unable to agree upon a verdict on to-day, the cause is continued until to-morrow morning.

25 UNITED STATES OF AMERICA,
Western District of Tennessee:

Further proceedings had in the said court, during its regular November term, A. D. 1874, on, to wit, the 20th day of March, A. D. 1875, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS, plaintiff,
vs.
TIPTON COUNTY, DEFENDANT. } No. 1639.

In this cause the jury heretofore empanneled in this cause having signified to the court that they have not yet agreed upon a verdict, it is ordered that the cause be continued till Monday morning next, at 10 o'clock a. m.

26 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1874, at the Federal court rooms, in the city of Memphis, on, to wit, the 22d day of March, 1875, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693.

Came the parties, and also the jury heretofore empannelled in this cause, and said jury do say they find for the plaintiffs, and that the defendant is indebted to them in the sum of twenty-five thousand dollars principal, and three thousand three hundred and forty dollars interest, on the bonds herein sued on. It is therefore considered by the court that plaintiffs recover of the defendant the sum of twenty-eight thousand three hundred and forty dollars, with interest till paid from this day, together with the costs of this cause, for which let execution issue.

27 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1874, at the Federal court rooms in the city of Memphis, on, to wit, the 15th day of April, 1875, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693.

Comes the defendant herein, Tipton County, by attorney, and moves the court for a new trial, when upon argument by counsel, and said motion being fully understood by the court, the same is continued to the next term.

28 In the hon. circuit court of the U. S. for West Tennessee.

THE ROGERS LOCOMOTIVE & MACHINE Works
vs.
TIPTON COUNTY.

This cause was heard before the Hon. H. H. Emmons, judge, etc., presiding, and a jury, upon the pleadings and proof, when, upon the same

and the charge of the court, the jury found for the plaintiff and assessed their damages at $29,250; when the defendant, having excepted to the rulings and charge of the court, and moved the court for a new trial, tendered this its bill of exceptions, which is signed, sealed, and made a part of the record, as follows, viz:

The plaintiff offered in evidence the 50 bonds sued on issued by defendant, bearing date of 1 Jan'y, 1869, payable to the Mississippi River Railway Company, or bearer, on the 1st of January, 1873, with interest, signed by John T. Douglass, chairman of the county court
29 of Tipton County, of Tennessee, and by R. S. Barret, as clerk of said court, and sealed with its seal; which bonds are Nos. 251 to 300, inclusive, and are in words and figures following, viz:

$500.] UNITED STATES OF AMERICA, STATE OF TENNESSEE. [$500.

Issued under & by virtue of section 6 of an act of the legislature of the State of Tennessee, passed February 25th, 1867, amended on the 12th day of February, 1869.

A special tax is levied by authority of law upon all the taxable property in the county of Tipton, to meet the principal and interest of these bonds, collectible in equal annual instalments running through five years as the bonds themselves mature.

TIPTON COUNTY RAILROAD BOND.

(500 dollars.)

No. 251.

Be it know' that the county of Tipton, State of Tennessee, is indebted to The Mississippi River Railroad Company, or bearer, in the sum of five hundred dollars, payable in the city of Memphis on the first day of January, eighteen hundred and seventy-three, with interest at the
30 rate of six per cent. per annum from Jan'y 1st, 1869, payable annually in said city upon surrender of the matured interest coupons hereto attached. This is one of four hundred bonds, all of the same denomination and rate of interest, issued by Tipton County in payment of a subscription of two hundred thousand dollars to The Mississippi River Railroad Company, made by the county court of said county, under the authority of the acts above recited, these bonds transferable by delivery and redeemable in five years, at the rate of forty thousand dollars a year, commencing January 1st, 1870.

Dated at Covington, in the county of Tipton, State of Tennessee, the first day of January, 1869.

JOHN T. DOUGLAS,
Chairman of Tipton County Court.

[L. S.] R. S. BARRET,
Clerk of Tipton County Court.

(Across the face:) $500.

(Endorsed:) State of Tennessee. Tipton Co. railroad bond. No. 297. $500. Issued to Mississippi River Railroad Company. Payable January 1, 187 . Interest at six per cent., payable annually January 1 in each year.

31 By consent the other bonds are not copied into this bill of exceptions; they are the same as the one above set forth except as to

number. The defendant then admitted that the signatures to said bonds and the sealing thereof are genuine and true, and by the proper officers then holding said offices of chairman and clerk and keepers of said seals, etc. The defendant further admits that said bonds, with others, amounting in all to $200,000.00, were so signed, sealed, and delivered by said officers of the defendant, and by them delivered to the said Mississippi River Railroad Company on the 21st July, 1869, under the orders of said county court, and then took and received from said company certificates of stock therein of and for $200,000.00.

The plaintiff then read the transcript from the records of said county court of February, 1869, and of July, 1869, in the following words and figures, viz:

September term, A. D. 1869.

In re collector of Miss. R. R. R. tax.

This day came into open court John Gracy Hall, who was here-
32 tofore, to wit, on the day of , 1869, appointed by the Mississippi River Railroad Company as collector of the Mississippi River railroad tax in and for this county, and made the following bond, to wit:

STATE OF TENNESSEE,
County of Tipton:

Know all men by these presents, that we, Jno. Gracy Hall, Robert S. Hall, Claudius B. Hall, and James J. Hall, all of said county and State, are held and firmly bound unto the State of Tennessee in the just and full sum of twenty five thousand dollars, for the payment of which well and truly to be made we and each of us bind ourselves, our heirs, and our representatives, jointly and severally, firmly by these presents.

Witness our hands and seals on this 6th day of September, A. D. 1869.

The condition of which obligation is such that whereas the said John Gracy Hall has been heretofore appointed by the Mississippi River Railroad Company collector of the Mississippi River railroad tax in for said county: Now, therefore, if and in case the said John G. Hall shall
33 well and truly and faithfully collect, and faithfully account for and pay over on the tenth day of every month during his continuance therein according to law all monies that may come into his hands as such collector, as aforesaid, and faithfully do and perform all the duties devolving upon him by law by virtue of said office, then the above obligation to be void; otherwise to remain in full force and virtue.

JOHN G. HALL. [SEAL.]
JAS. I. HALL. [SEAL.]
ROBT. HALL. [SEAL.]
C. B. HALL. [SEAL.]

Approved by the court.

JOHN T. DOUGLAS,
J. P. & Chairman.

Acknowledged before me.

R. S. BARRET, *Clerk.*

And said John G. Hall was duly qualified by taking and subscribing the oath required by law.

Whereupon it is ordered by the court that said John Gracy Hall be clothed with all the powers and charged with all the duties of collector of said tax.

November term, A. D. 1869.

In re Mississippi River railroad tax.

Ordered that the collector of the Mississippi River railroad tax
34 for Tipton County shall be the custodian of the taxes collected by him, and that he shall pay over no part of the same, except in the redemption of the bonds issued by the county to said railroad company, or in payment of interest on said bonds. And ordered further that said collector shall report monthly to the county court what amount of money he has collected, and what bonds he has redeemed, and what interest paid, and shall make return to the court of the bonds & interest coupons so taken up by him.

July term, 1870.

This day John G. Hall, collector for the Mississippi River railroad tax, received a credit to the amount of $594.59¾.

July term, 1870.

In re proxies to vote Miss. R. R. stock.

On motion, the following resolution was adopted:

Resolved, That the court do now proceed to the election of three commissioners to represent whatever stock the county of Tipton owns in the Mississippi River Railroad Company, and to cast its vote in the
35 election of officers for said company, and do all things necessary, and which by law they are entitled to do.

On motion of S. R. Shelton, the court appointed the quorum court to cast the vote of Tipton County in the Miss. R. R. R.

Whereupon John T. Douglas prayed an appeal from the above action to the next term of the circuit court of this county, which appeal was granted, and said Douglas, with W. A. Yarbro an' L. Hill as his sureties, made bond in the penalty of $250.00, payable & conditioned as required by law.

36 The plaintiff then read the acts of assembly of Tennessee as follows, viz:

1 copy, ch. 48, sec. 6, passed 25th Feb'y, '67.
" " 6, " 1,2,3, " 5 Nov. "
" " 45, " 28,29,30,31,32, passed 12th Feb., '69.
" " 43, " 2, " 19 " "
" " 49, 70.

It was admitted by defendant that said Mississippi River Railway Company was a body corporate and politic, created by acts of assembly of Tennessee passed 29th January, 1858.

The plaintiffs here rested their case.

1. The defendant then offered evidence of facts tending to prove and establish fraud, moral coercion, intimidation, and bribery in the procure-

ment and issuance of the bonds in suit in this case upon the part of the said Mississippi River Railway Company.

2. And also offered evidence tending to show and prove that said fraud, moral coercion, intimidation, and bribery were unknown to the county court of Tipton County in October, 1871, when Norton, the president of the Paducah & Gulf Railroad, bore the proposition of the
37 Mississppi River Railway Company to said county court to extend the time of payment of said bonds, and to levy a tax therefor, as shown by said proposition, and at which time said Norton spoke of the contemplated consolidation of said roads, as hereinafter shown by his testimony offered in rebuttal by plaintiff.

3. And offered evidence tending to prove that the aforesaid corrupt practices were not known to said county court until February, 1875.

4. Defendant also offered evidence tending to show that the plaintiffs received the bonds in suit from the Paducah and Memphis Railroad Company after the said bonds were overdue.

5. It is admitted by plaintiffs and defendant that said stock was subscribed and said bonds issued by the said county court, without any election having been proposed or held to obtain the consent of a majority of the qualified or legal voters of said county authorizing said subscription of stock or issuance of bonds.

The plaintiffs then offered and read in evidence in rebuttal the
38 complete and full transcript from the minutes of said county court as follows:

County court, February term, 1869.

STATE OF TENNESSEE,
County of Tipton:

Be it remembered that at a county court begun and held in and for the county of Tipton and State of Tennessee, at the court-house in the town of Covington, on the first Monday in February, A. D. 1869, it being the first day of said month, present and presiding the worshipful John T. Douglas, J. P. & chairman; R. S. Winn, I. W. Owen, Wm. McIntosh, L. B. Yarbro, Sam. L. Taylor, J. C. Vaughn, Wm. A. Turnage, N. C. Hofler, W. H. Wooten, W. A. Barons, Wm. Coward, Jas. McLeister, Benj. Sherrod, & John S. Peete, justices; D. C. Slaughter, sheriff, and Rich'd S. Barret, clerk, when the following proceedings were had:

This day came into open court Abram S. Mitchell, president of the Mississippi River Railroad, and filed here and exhibited his, the said A. S. Mitchell's affidavit as such president as aforesaid, that the cost of grading and preparation of the road-bed for said railroad, on the estimate of the chief engineer thereof, through this county, would exceed three hundred and eighty thousand dollars.

39 And upon motion of Wm. McIntosh, justice, &c., and whereas, by act of the general assembly of the State of Tennessee, passed the 25th of February, A. D. 1867, the counties lying along the route of the Mississippi River Railroad Company are authorized to subscribe to the capital stock of said company an amount not exceeding two thirds of the cost of the grading and preparation of the road-bed in each county respectively. And whereas, from the oath of A. S. Mitchell, president of said company, filed with the clerk, and now to this court exhibited, it appears that the cost of grading and preparation of the road-bed of said railroad through Tipton County, according to the estimate of the engineer, will exceed three hundred and eighty thousand

dollars: Now, therefore, all the justices named in the caption, to wit: Wm. Coward, John T. Douglas, Wm. McIntosh, W. A. Bowers, N. C. Hoffer, Sam. R. Shelton, L. B. Yarbro, S. L. Taylor, I. W. Owen, W. H. Wooten, J. C. Vaughn, John S. Peete, Benj. Sherrod and James
40 McLeister, being present and voting in the affirmative, Ransom S. Winn, and Wm. A. Turnage, voting in the negative, it is ordered that the chairman of this court, for and on behalf of the county of Tipton, be and he is hereby instructed to subscribe the sum of two hundred thousand ($200,000) dollars to the capital stock of the Mississippi River Railroad Company on the terms and conditions prescribed by the act of the legislature aforesaid authorizing such subscription to be made. And it is further ordered by the court, that an appropriation of two hundred thousand ($200,000) dollars be and the same is hereby made for the purpose of assisting the Mississippi River Railroad in the building of said road through Tipton County, said appropriation to be made at the rate of forty thousand ($40,000) dollars per annum, payable in bonds maturing in one, two, three, four and five years, with interest at six per cent. per annum, payable semi annually, which bonds the chairman of this court is hereby authorized to issue immediately,
41 signed by himself and countersigned by the clerk of this court. And it is further ordered by the court, that a special tax shall be levied on the assessed value of the taxable property of this county, which tax shall be called the Mississippi River Railroad tax, and said tax shall be regularly levied in such amounts as shall meet the annual appropriations for the purpose of assisting in the building of the Mississippi River Railroad in Tipton County. And it is further ordered by the court that the chairman of this court be, and he is hereby, directed to enter the subscription of Tipton County to the capital stock of the Mississippi River Railroad Company for the sum of two hundred thousand ($200,000) dollars, on the books of said company. And it is further ordered by the court that John T. Douglas, Benj. Sherrod and Wm. Coward, any two of whom may act, be and they are hereby authorized and appointed to represent the stock now subscribed by Tipton
42 County, in all meetings of the stockholders, and in all elections of directors of said Mississippi River Railroad Company until further orders of this court.

Affidavit.

STATE OF TENNESSEE,
Tipton County.

I, Abram S. Mitchell, president of the Mississippi River Railroad Company, do make oath that the cost of grading the road-bed of said railroad through Tipton County, and preparing the same for the iron rails according to the estimate of the chief engineer now in my possession, will slightly exceed the sum of three hundred & eighty thousand dollars, and that if the county of Tipton should subscribe, as the law permits to be done, two-thirds of the costs of the grading and preparation of the road bed, the county subscription would amount to two hundred and fifty-two thousand dollars.

A. S. MITCHELL, *Pres.*

Sworn and subscribed to before me this 12th Nov'r, 1867.

R. S. BARRET,
Clerk.

43 Be it remembered that at a county court began and held at the court-house in the town of Covington, in and for the county of Tipton, on Monday, the 5th day of July, A. D. 1869, it being the first Monday in said month, present and presiding the worshipful John T. Douglas, justice & chairman, Sam'l R. Shelton, Robert McLagan, Wm. McIntosh, I. W. Owen, Dan. B. Boswell, J. C. Vaughn, L. B. Yarbro, W. A. Turnage, W. S. Coward, W. A. Bowers, Jas. McLeister, W. T. Rice, Benj. Sherrod, and John S. Peete, justices; David C. Slaughter, sheriff; and Rich'd S. Barret, clerk; when the following proceedings were had:

Ordered by the court that the subscription heretofore made by the county of Tipton to the Mississippi River Railroad Co. be so modified, with the assent of said company, as that the interest on the bonds of Tipton County to be issued to said railroad company be payable
44 annually on the first day of January in each year, instead of semi-annually, as provided in the order of subscription.

Tax.

All the justices mentioned in the caption present and voting in the affirmative, ordered by the court that, for the purpose of paying the amount to fall due on the subscription of the county to the Mississippi River Railroad during the present year, a tax of two and one quarter cents be, and the same is hereby, levied on each and every dollar's worth of taxable property within the county.

Resolved, That it is the sense of this court that the subscription of $200,000 made by this county to the Mississippi River Railroad be disposed of under section 1156, of the code of Tennessee.

Nov. term, 1869.

At November term, 1869, the following order was made, to wit:

Bond.

In re Mississippi River Railroad tax.

This day came Jno. G. Hall, collector of the Mississippi River Railroad tax, and filed the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector of the Mississippi River Railroad tax
45 for said county, would respectfully report that he has collected on said a/c's for the year 1869 the sum of about $7,000.00, and that he has paid the following amounts and on the following bonds:

Amt.	p'd	bond	No.	1	to	Miss.	R.	R.	$500
"	"	"	"	2	"	"	"		$500
"	"	"	"	3	"	"	"		$500
"	"	"	"	4	"	"	"		$500
"	"	"	"	5	"	"	"		$500
"	"	"	"	6	"	"	"		$500
"	"	"	"	7	"	"	"		$500
"	"	"	"	8	"	"	"		$500
"	"	"	"	9	"	"	"		$500
"	"	"	"	10	"	"	"		$500

Amt. p'd bond No. 11 to Miss. R. R		$500
" " " 12 " " "		$500
Amt. p'd coupon on bond No. 1 to Miss. R R		$25
" " " " " " 2 " " "		$25
" " " " " " 3 " " "		$25
" " " " " " 4 " " "		$25
" " " " " " 5 " " "		$25
" " " " " " 6 " " "		$25
" " " " " " 7 " " "		$25
" " " " " " 8 " " "		$25
" " " " " " 9 " " "		$25
" " " " " " 10 " " "		$25
" " " " " " 11 " " "		$25
" " " " " " 12 " " "		$25
		$6,300 00

46 He would further report that on the coupons paid as above reported the same would, on maturity of their several bonds, have amounted to $30.00 each, and being paid two months before maturity, an abatement of the interest for that time was made as above shown. The said bonds and coupons are herewith filed and made a part of this report.

All of which is respectfully submitted.

JOHN G. HALL,
Railroad Tax Col. M. R. R. R.

Which report being unexcepted to, was in all things approved and confirmed, at December term, 1869.

In re Mississippi R. R. tax.

Came John G. Hall, collector of the Mississippi River Railroad tax, and made the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector of the Mississippi River Railroad tax for the year 1869, for said county, would respectfully report that he has collected on said account, since the date of last report the sum of about $3,000.00; and that he has paid the following am'ts and on the following bonds:

47 Am't p'd bond No. 13 to Miss. R. R. R		$500
" " " " 14 " " " " "		$500
" " " " 15 " " " " "		$500
" " " " 16 " " " " "		$500
Am't p'd coupon No. 13 to Miss. R. R. R		$25
" " " " 14 " " " " "		$25
" " " " 15 " " " " "		$25
" " " " 16 " " " " "		$25
		$2,100 00

He would report that the same deduction of interest was made as mentioned in the last report. The said bonds and coupons are herewith filed and made a part of this report.

All of which is respectfully reported.

JOHN G. HALL.
R. R. Tax Collector, Tipton County, Tenn.

Which report being unexcepted to, was confirmed.

January term, 1870.

In re Mississippi River R. R. tax.

Came John G. Hall, collector, &c., and filed the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector of the Mississippi River R. R. tax for the year 1869, for said county, would respectfully report that he has collected on said a/c for said year the sum of about $10,000.00; and
48 that he has paid the following am'ts & on the following bonds:

Am't p'd	bond	No.	17	to	Miss.	R.	R.	R.	.....	$500
"	"	"	18	"	"	"	"	"	.....	$500
"	"	"	19	"	"	"	"	"	.....	$500
"	"	"	20	"	"	"	"	"	.....	$500
"	"	"	21	"	"	"	"	"	.....	$500
"	"	"	22	"	"	"	"	"	.....	$500
"	"	coupon	17	"	"	"	"	"	.....	$30
"	"	"	18	"	"	"	"	"	.....	$30
"	"	"	19	"	"	"	"	"	.....	$30
"	"	"	20	"	"	"	"	"	.....	$30
"	"	"	21	"	"	"	"	"	.....	$30
"	"	"	22	"	"	"	"	"	.....	$30
										$3,180 00

Said bonds and coupons are herewith filed & made a part of this report.

All of which is respectfully submitted.

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

And which being unexcepted to, was in all things confirmed.

February term, 1870.

In re Mississippi River R. R. tax.

Came John G. Hall, collector, etc., and made the following report:

To the worshipful county court, Tipton County, Tennessee:

The undersigned, collector of the Mississippi River Railroad
49 tax for said county, would respectfully report that he has collected on said a/c for the year 1869, since last report, the sum of about $3,000.00; and that he has paid the following amounts and on the following coupons, viz:

From coupon 1, on bond , to coupon 1, on bond 395, inclusive, amounting to $11,190.00.

He would further report, that up to this date, he has collected the whole amount of $24,574.11, and that there remains to be collected the sum of $27,870.42.

All of which is respectfully submitted this, the 7th day of February, 1870.

JOHN G. HALL,
Railroad Tax Collector for Tipton County.

And which report, being unexcepted to, is in all things approved and confirmed.

March term, 1870.

In re Mississippi River railroad tax.

In this matter, John G. Hall filed the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector of the Mississippi River railroad tax
50 for said county, would respectfully report that he has collected since last report on said account the sum of $3,000.00, and has made no payments, which is respectfully submitted this March 7th, 1879.

JOHN G. HALL,
Railroad Tax Collector Tipton County.

And which report being unexcepted to, was in all things approved and confirmed.

April term, 1870.

In re railroad tax.

Came John G. Hall, collector, etc., and filed the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector for the Mississippi River Railroad Company, would respectfully report that he has collected on said act. for the year 1869, since last report, the sum of about $3,000.00, and that he has taken the following bonds:

No. 23, for	$500
" 24, "	500
Amounting to	$1,000.00

And that he has on hand at this time about $6,000.00.
All of which is respectfully submitted April 4th, 1870.

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

51 And which being unexcepted to was approved and confirmed.

April term, 1871.

In re Mississippi R. R. R. tax.

On motion the court proceeded to consider the question of levying a tax to meet the Mississippi River R. R. bonds and coupons now due and falling due this year, when it was ordered that no such tax be levied.

May term, 1871.

John G. Hall, Miss. River tax collector, this day presented the following report, to wit:

To the honorable county court of Tipton County, Tennessee:

The undersigned, collector of the Miss. River R. R. tax, would respect-

fully report to your honorable body that he has since last report collected nothing and paid out nothing on said act.

Respectfully,

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

Which report being unexcepted to, is in all things approved.

May term, 1870.

In re Miss. R. R. tax.

52 Came John G. Hall, Miss. River R. R. tax collector for the county, and presented the following report, to wit:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, collector of the Miss. River Railroad tax for Tipton County, would respectfully report that he has collected on said act, for the year 1869, since last report, the sum of about $2,000.00, and has paid on and taken up the following bonds & coupons, to wit: Coupons No. 1, on bonds Nos. 396, 397, 398 & 400, amounting to $150.00; and on bonds Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, & 36, amounting to $6,000.00; amounting in all to $6,150.00. I have in hand about $2,000.00.

All of which is respectfully submitted.

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

Which report being unexcepted to was in all things approved & confirmed.

July term, 1870, the following:

In re Miss. R. R. R. tax.

Came John G. Hall, collector, etc., and filed the following report:

To the honorable county court of Tipton County, Tenn:

53 The undersigned, railroad tax collector for said county, would respectfully report that he has collected on said account for the year 1869, since last report, the sum of about $150.00; that he has paid out nothing.

All of which is respectfully submitted this, the 4th July, 1870.

JOHN G. HALL,
Railroad Tax Col. for Tipton County.

And which, being unexcepted to, was approved and confirmed.

And this:

On motion the court proceeded to consider the question of levying a tax to meet the Mississippi River Railroad bonds and coupons falling due this year, when it was ordered that no such tax be levied: John Billings, S. J. Bradshaw, W. S. Coward. J. S. Cothran, Jas. F. Dickson, M. Drummonds, John Linahan, Jas. C. McLeister, C. N. McFadden, W. H. McQuiston, J. G. Moore, H. C. McCain, J. R. McCall E. W. Massey, J. W.

Owen, W. J. Rodgers, Henry Sanford, Thos. Taylor, H. M. Turnage, C. Tucker, & Isaac Wiseman, present, and voting for such re-
54 fusal, and S. P. Bernard, J. T. Douglas, J. S. Peete, S. R. Shelton, W. D. Smith, Ben. Sherrod, & W. A. Yarbro voting for levying such tax.

August term, 1870, the following:

In re Miss. R. R. tax.

This day came into open court John G. Hall, Miss. River R. R. tax collector, and made report, which report is in the words and figures following, to wit:

To the honorable county court of Tipton County, Tenn.

The undersigned, collector of the Mississippi River Railroad tax for Tipton County, would respectfully report that he has collected on said account since last report the sum of about $300.00, and paid out nothing.

Which is respectfully submitted, this 1st day of August, 1870.

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

Which report being unexcepted to, is in all things approved & confirmed.

September term the following:

In re Miss. River R. R. tax.

This day came into open court John G. Hall, the Miss. River R.
55 R. tax collector, and made report, which report is in the words and figures following, to wit:

To the honorable county court of Tipton County, Tennessee:

The undersigned, collector railroad tax for Tipton County, would respectfully report that he has collected on said account for the year 1869, and since last report, the sum of about $125.00. He has paid out nothing.

JOHN G. HALL,
R. R. Tax Collector for Tipton County.

Which report being unexcepted to, is in all things approved and confirmed.

At October term, 1870, the following, to wit:

In the matter of the Miss. River R. R.

In this matter Rich'd S. Barret filed the following report:

To the worshipful county court of Tipton County:

The undersigned would respectfully report to your worships, that the collector for the Miss. River R. R. has deposited with him the following bonds and coupons which he has paid off: bonds No. 1 to 16 inclusive, for $500.00 each, amounting to $8,000.00; coupons on bonds from

56 No. 1 to No. 16, inclusive, $25.00 each, $400.00; bonds No. 17 to 22, inclusive, for $500.00 each, $3,000.00; coupons on bonds No. 17 to No. 22 inclusive, $30.00 each, $180.00; coupons No. 1 of bonds No. 23 to No. 400, inclusive, $30.00 each, $11,640.00; bonds No. 23 to No. 43, inclusive, $500 each, $10,500.00.

STATE OF TENNESSEE,
Tipton County:

I, Rich'd S. Barret, clerk of the county court, do certify that the foregoing is correct from the bonds & coupons filed with me by Jno. G. Hall, the tax collector of the Miss. River Railroad for Tipton County. All of which is most respectfully submitted to your worships, this 5th day of Oct., 1870.

R. S. BARRET, *Clerk.*

Received from R. S. Barret, clerk of Tipton County, the above bonds and coupons, Oct. 5th, 1870.

W. S. COWARD.
J. R. McCALL.

John G. Hall, tax collector of the Miss. River Railroad, this day filed his monthly report, as following:

57 The undersigned, collector of the Miss. Railroad tax, would respectfully report that he has collected on said tax for the year 1869 during the past month of September, nothing.

Respectfully submitted this 3d day of October, 1870.

JOHN G. HALL,
Railroad Tax Collector for Tipton County.

Which report is confirmed.

December term, 1870, the following:

John G. Hall, collector, etc., presented the following report:

To the honorable county court of Tipton County:

The undersigned, tax collector for the Miss. R. R. road for said county, would respectfully report that he has collected on said account for the year 1869 & since last report, nothing. That he has paid and taken in bond No. 80, $500.00.

Respectfully submitted.

JOHN G. HALL,
R. R. Tax Collector, Tipton County.

Which, being unexcepted to, was approved and confirmed.

January term, 1871, the following:

In report of Miss. River Railroad tax collector.

John G. Hall, Mississippi River Railroad tax collector, this day
58 presented to court the following report:

To the honorable county court of Tipton County:

The undersigned, railroad tax collector, respectfully reports to your honorable body that he has collected or disbursed nothing.

JOHN G. HALL,
Railroad Tax Collector for Tipton County.

Which report was approved and confirmed, and ordered to be filed.

February term, 1871, the following:

In re Miss. R. R. R. tax.

John G. Hall, Miss. River Railroad tax collector for Tipton County, this day presented the following report, to wit:

To the hon. county court of Tipton County, Tenn.:

The undersigned, collector of the Miss. River Railroad tax for said county, would respectfully report that he has collected nothing since last report for the year 1869.

JOHN G. HALL,
R. R. Tax Collector.

Which report, being unexcepted to, was in all things approved and confirmed.

April term, the following:

In re Miss. R. R. tax.

59 Jno. G. Hall, Miss. R. R. tax collector, this day filed his report, which is in the words and figures following, to wit:

To the hon. county court of Tipton County, Tenn.:

The undersigned would respectfully report that he has neither collected or paid out anything on the Miss. R. R. tax ac't since last report, April 3, 1871.

JOHN G. HALL,
R. R. Tax Col., Tipton County.

Which report, being unexcepted to, is in all things approved and confirmed.

June term, 1871, the following:

John G. Hall, Miss. R. R. R. tax collector, this day made the following report, to wit:

To the hon. county court of Tipton County, Tenn.:

The undersigned, tax collector of Tipton County for the Miss. River Railroad, would respectfully report to your hon. body that he has collected on said account since last report the sum of $11.25; that he has paid out nothing.

Respectfully,

JOHN G. HALL,
R. R. Tax Col. for Tipton County.

60 Which, being unexcepted to, is in all things approved & confirmed.

August term, 1871, the following:

John G. Hall, Miss. River R. R. collector, this day presented the following report, to wit:

To the hon. county court of Tipton County:

The undersigned, tax collector for the Miss. River Railroad for Tip-

ton County, would respectfully report that he has collected since his last report on said account the sum of $29.25.

Resp't'y,

JOHN G. HALL,
R. R. Tax Col., Tipton County.

Which, being unexcepted to, is in all things approved and confirmed.

September term, 1871, the following:

John G. Hall presented the following report:

To the hon. county court of Tipton County:

The undersigned, R. R. tax collector for Tipton County, would respectfully report that he has collected nothing on said ac't since last report.

Resp't'y,

JOHN G. HALL,
R. R. Tax Col. for Tipton County.

Which report was approved.

61 Be it remembered that at a county court began and held at the court-house in the town of Covington, in and for the county of Tipton and the State of Tennessee, on the 2d day of October, A. D. 1871, the same being the first Monday of said month—present and presiding the worshipful Chas. H. Hill, J. P. & chairman; C. Angelo, J. S. Cothran, J. T. Douglas, J. G. Moore, W. McClelland, J. C. McLeister, J. R. McCall, C. N. McFadden, L. Page, W. J. Rodgers, S. R. Shelton, C. Tucker, T. Taylor, T. J. Tuckins, J. Wiseman, Wm. A. Yarbro, J. C. Paul, S. K. Drummonds, M. Herring, W. H. McQuistan, and S. P. Bernard, associate justices; Ben. F. Locke, sheriff, and R. S. Barret, clerk—when the following proceedings were had, to wit:

Resolved, by the county court of Tipton County, Tennessee, that we accept the proposition of the Mississippi River Railroad Company to extend the time for the payment of the county subscription to said company, which proposition is in the following words and figures, to wit:

62 Extract from the proceedings of the board of directors of the Mississippi River Railroad Company.

MEMPHIS, TENN., *Sept. 30th*, 1871.

C. H. Hill, of Tipton, offered the following resolutions, which were adopted:

Whereas the county of Tipton has not provided means for the payment of her bonds and coupons issued to the Mississippi River Railroad Company, to the amount of $200,000, and interest (except to the amount of $ in coupons and bonds heretofore paid): Now, therefore, it is hereby resolved, that Ex. Norton, esq., be and is hereby appointed an agent for this company to propose to said county of Tipton that this company will grant an extension of time for the payment of said bonds and interest, so that the said payments shall be extended to the period of ten years from the date of the bonds, in ten annual installments, instead of the time they now have to run. This extension

to apply to all bonds which this company own or control. But this proposition shall be made on condition that the county court of Tipton
63 County shall immediately levy a tax and proceed to its collection for the amount now due under this offer, and that they shall each year levy, collect, and promptly pay over the amount to fall due each year as the same falls due during the whole period of this proposed extension, and in case of a failure to levy, collect, or promptly pay over said annual amounts, then the remaining bonds to become due according to their original terms.

JOHN L. NORTON, *Sec'y.*

And it is hereby ordered by the court that a tax of eighty-five cents on the one hundred dollars' worth of property be levied on both real and personal, to meet the first installment due on the bonds issued to the Mississippi River Railway Company. The following named justices voting in the affirmative: C. H. Hill, Jesse S. Cothran, John T. Douglas, Wm. McClelland, Jas. R. McCall, C. N. McFadden, L. Page, S. R. Shelton, C. Tucker, W. A. Yarbro, Marshall Herring, W. H. McFurstan, S. P. Bernard—13; and the following voting in the neg-
64 ative: C. Angelo, J. G. Moore, J. C. McLeister, W. J. Rogers, Thos. Taylor, T. J. Tuckins, J. C. Pace, & S. K. Drummonds—8.

March term, 1872, the following:

In re railroad report.

John G. Hall, Miss. R. R. R. tax collector, this day filed the following report, to wit:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, R. R. tax collector for said county, would respectfully report that he has collected on said account since last report the sum of $18.00.

Very resp't'y,

JOHN G. HALL,
R. R. Tax Collector.

Which, being unexcepted to, is in all things approved and confirmed.

At the July term, 1872, the following:

This day the court proceeded to levy a tax to meet the county subscription to said railroad for the amount falling due the year 1872, all the justices named in the caption voting therefor. Ordered that said tax be fixed at one per cent. on all the taxable property in the county.

September term, 1872, the following:

In re Miss. R. R. tax book.

On motion, it is ordered that the clerk of this court deliver to
65 James C. Walker, the tax collector elect for said company, the tax book now made out for the year 1871, the company having complied with its contract in the premises.

October term, 1872, the following:

In re railroad report.

J. C. Walker, railroad tax collector, filed the following report, to wit:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, railroad tax collector for said county, would respectfully report to your court, that he has collected $36.45 (thirty-six $\frac{45}{100}$ dollars) on said account since last report, Oct. 7th, 1872.

Respectfully,

J. C. WALKER,
R. R. Tax Col. for Tipton Co.

Which report, being unexcepted to, is in all things approved & confirmed.

November term, the following:

James C. Walker, railroad tax collector, etc., this day filed the following report:

To the honorable county court of Tipton County, Tennessee:

The undersigned, railroad tax collector for said county, would respectfully report to your worshipful body that he has collected four hundred and fifty-five $\frac{70}{100}$ dollars on the book of 1871, and five hundred dollars on the book of 1872, since last report.

November 4th, A. D. 1872.

Respectfully,

J. C. WALKER,
R. R. Tax Collector for Tipton Co.

Which report, being unexcepted to, was in all things approved & confirmed.

December term, 1872, the following:

In re railroad collector's report.

Came J. C. Walker, railroad tax collector, and made the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, railroad tax collector for said county, would respectfully report to your worshipful body that he has collected twenty-two hundred dollars on a/c 1871, and twenty-four hundred dollars on a/c 1872, since last report.

Dec. 3d, 1872.

Respectfully,

J. C. WAKLER,
Collector.

And, being unexcepted to, is confirmed & approved.

In re railroad report, 1869.

John G. Hall, railroad collector for the year 1869, and made the following report:

67 To the worshipful county court of Tipton County, Tennessee:

The undersigned, R. R. tax collector, would respectfully report that he has collected on said account for the year 1869, principal & interest, about $700.00.

Dec. 2, 1872.

Very respectfully,

JOHN G. HALL,
Collector.

And, being unexcepted to, is approved and confirmed.

January term, 1873, the following:

In re R. R. tax, 1869.

Came J. G. Hall, collector for said year, and made the following report:

To the worshipful county court of Tipton County:

The undersigned, R. R. tax collector for said county, would respectfully report to your worshipful court that he has collected on said account, since last report, the sum of $550.00 and paid bonds Nos. 48 & 49, $1,000.00; interest on same, $180.00.

Respectfully submitted.

JOHN G. HALL,
R. R. Tax Col. for 1869.

Which is by the court approved & confirmed.

In re R. R. tax, 1871 & 1872.

68 Came J. C. Walker, collector of said taxes for said year, and filed the following report:

To the honorable county court of Tipton County, Tennessee:

The undersigned, railroad collector for said county, would respectfully report to your worshipful body that he has collected four thousand and seven hundred dollars on account of 1871, and five thousand and three hundred on the account of 1872, since last report.

Jan'y 9, 1873.

Respectfully,

J. C. WALKER,
R. R. Tax Col. for Tipton Co.

Which is approved and confirmed by the court.

February term, 1873, the following:

In re rail report, 1869.

John G. Hall, collector on [illegible] said taxes, and made the following report:

To the worshipful county court of Tipton County, Tenn.:

The undersigned, R. R. tax collector for said county, would respect-

fully report that he has collected on said ac't for the year 1869, and since last report, the sum of $1,972.01. Has paid out the sum of
69 $1,770.00 on bonds Nos. 50, 51, & 52, which are herewith filed with the clerk of the county court of Tipton County.

Very respectfully,

JOHN G. HALL,
R. R. Tax Collector for s'd County.

Which, being unexcepted to, is confirmed.

In re R. R. tax report, years 1871 & 1872.

James C. Walker, collector of said taxes, filed the following report, to wit:

The undersigned, railroad tax collector for said county, would respectfully report to your worshipful body that he has collected fifteen hundred ($1,500.00) dollars on the account of 1871, and seventeen hundred & ninety eight $\frac{81}{100}$ dollars on account 1872, since last report.

Respectfully,

J. C. WALKER,
Railroad Col. for Tipton Co.

Which, being unexcepted to, is in all things approved and confirmed.

April term, 1873, the following:

John G. Hall, railroad collector, etc., filed the following report:

The undersigned, railroad collector for Tipton County for the year 1869, would respectfully report to your worshipful body that he
70 has collected on said ac't since last report the sum of $297.21, and has paid and taken in bond No. 64, with $90.00 interest thereon, amounting to the sum of $590.00.

All of which is respectfully submitted.

March 3d, 1873.

JOHN G. HALL,
R. R. Tax Collector, Tipton Co., 1869.

Which, being unexcepted to, was in all things approved and confirmed.

April term, 1873, the following:

In re of the subscription of $200,000.00 to Mississippi Railroad Company.

Came the said company by its attorney and made application to have issued coupons or warrants for the interest on the one-half of the maturities of the bonds issued for said subscription in the same and numbers as were the original coupons thereto attached and payable in the same manner and amounts annually as by the terms of the original bonds and the contract of extension. On motion, the same is laid over until the July term of this court.

Also the following:

In re J. C. Walker, R. R. tax report for 1871 & 1872.

71 J. C. Walker, railroad tax collector for the years 1871 & 1872, made the following report:

To the honorable county court of Tipton County, Tenn.:

The undersigned, railroad tax collector, would respectfully report to your body that he has collected four thousand and five hundred dollars on the ¾ of 1871 and five thousand and five hundred dollars on the ¾ of 1872 since last report.

April 8th, 1873.

J. C. WALKER,
Collector.

Which, being unexcepted to, is in all things approved & confirmed.

And also John G. Hall' report, 1869.

John G. Hall tendered the following report of collections on account of railroad taxes for the year 1869, to wit:

To the worshipful county court of Tipton County, Tennessee

Your undersigned railroad tax collector for 1869 would report to your honorable body that he has paid on bonds Nos. 70, 71, & 72, $1,500.00, principal & interest $290.96, total principal & interest $1,790.96, which is respectfully submitted.

April 8th, 1873.

JOHN G. HALL,
R. R. Tax Collector for 1869.

72 Which, being unexcepted to, is in all things approved and confirmed.

May term, 1873, the following:

Jas. C. Walker this day presented the following report, to wit:

To the worshipful county court of Tipton County, Tenn.:

The undersigned, railroad tax collector for said county, would respectfully report to your worshipful body that he has collected $2,139.68 (twenty-one hundred & thirty-nine $\frac{68}{100}$ dollars) on the ¾ 1871, and $2,400 (twenty-four hundred dollars) on ¾ 1872, since last report.

May 6th, 1873.

Respectfully,

J. C. WALKER,
Collector.

Which report is confirmed.

June term, 1873, the following:

John G. Hall, tax collector for 1869, presented the following report, to wit:

To the honorable county court of Tipton County, Tenn.:

The undersigned, R. R. tax collector for 1869, would respectfully re-

port that he has collected since last report the sum of about $1.20,
73 and has taken up bond No. , principal, $500.00; int., $100.00, $600.00.

All of which is respectfully submitted.
June 2d, 1873.

JOHN G. HALL,
R. R. Tax Col. for 1869.

Which is approved & confirmed.

And also this:

Jas. C. Walker, railroad tax collector, filed the following report:

To the honorable county court of Tipton County:

The undersigned, railroad tax collector for said county, would respectfully report to your worshipful body that he has collected $500.00 (five hundred dollars) on the account of 1871, and six hundred dollars ($600.00) on the account of 1872, since last report.

June 2d, 1873.

Respectfully,

J. C. WALKER,
Collector.

January term, 1872.

In re Mississippi River R. R. tax.

Came John G. Hall, collector, etc., of said taxes, and on motion it is ordered by the court, a majority of the justices named in the caption voting therefor, that a credit of four thousand one hundred and thirty-six $\frac{93}{100}$ ($4,136$\frac{93}{100}$) dollars be granted to said collector on the
74 accounts for the year A. D. 1869 on the tax-lists issued to him for said year, the same being for the lands condemned and unsold as per report filed, the court hereby not releasing any right, claim or lien on the said lands therefore; and on motion of said Hall for a reimbursement for $460.00, costs and charges on the same, the court declined entertaining the said motion.

And at the July term, 1872, is the following:

Monday, the first day.

This day, after proclamation being made, the court proceeded to the election of railroad tax collector for this county to collect the county subscription to the Memphis & Paducah Railroad. Thereupon James C. Walker, receiving a majority of all the votes cast, was declared duly elected. The bond of said collector is fixed at fifty thousand dollars, and said J. C. Walker is given until the first Monday in August next to execute said bond.

And at the June term, 1872, appears the following:

In re collector of R. R. tax.

75 Came the Paducah and Memphis Railroad Company by its attorney, Holmes Cummins, and moved the court to provide for the collection of the tax levy of last October term of this court, to meet an

installment of the bonds of this county heretofore issued to the Mississippi River Railway Company, as well as the levy to be made at the next term of this court to meet the next installment of said bonds, by the appointment of a collector for that purpose. Whereupon it is ordered by the court, that these matters be continued until the next term of this court for the action of the quarterly court and the appointment by it of such.

July term, 1873.

In re R. R. tax settlement.

On motion, the quorum court is hereby appointed & authorized to settle with the railroad tax collector, and make some disposition of the bonds & coupons taken up by said collector, by cancellation or otherwise.

May term, 1873.

76 John G. Hall, tax collector for 1869, presented the following report:

The undersigned, railroad tax collector for Tipton County, would respectfully report that he has collected nothing since last report.
May 6th, 1872.

JOHN G. HALL,
Collector.

Which is confirmed.

May term, 1873.

In re Rail R. tax releases, years 1871 & 1872.

Came J. C. Walker, railroad tax collector for the years 1871 & 1872, and tendered his accounts of releases on said list, amounting to $504.33, which being examined & understood by the court, the same is allowed as a credit on his said accounts for said years 1871 & 1872.

July term, 1873.

In re election R. R. tax collector.

On motion, after proclamation, the court proceeded to the election of railroad tax collector for the year 1873, whereupon Bailey Sanford received a majority of the votes, was declared to be duly & legally elected to said office.

December term, 1873.

Railroad tax report.

77 To hon. county court:

I have to report no collections for the past two months.
Dec'r 1st, 1873.

JNO. G. HALL,
Railroad Tax Col., 1869.

Which, being unexcepted to, is confirmed and approved.

August term, 1872.

Be it remembered that at a county court begun and held at the courthouse in the town of Covington, in and for the county of Tipton, State of Tennessee, on the first Monday in August, A. D. 1872, the same being the 5th day of said month, present and presiding the worshipful John T. Douglas, J. P. & chairman, Lawrence Page and Jesse S. Cothran, associate justices, Ben. F. Locke, sheriff, and R. S. Barrett, clerk, when the following proceedings were had, to wit:

August term, 1872.

This day came James C. Walker, in open court, and made bond as the railroad tax collector for the years 1871 & 1872, which bond was
78 approved of by the court and ordered to be filed.

In re Miss. R. R. R. tax.

John G. Hall this day presented the following report:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, R. R. tax collector for Tipton County, would respectfully report that he has collected nothing on said account since last report.

Aug. 5th, 1872.

JOHN G. HALL,
R. R. Tax Collector.

Which is in all things approved and confirmed.

July term, 1873, the following:

In the matter of the subscription of $200,000.00 to the Mississippi Railway Co.

In the matter herein of the issuance of coupons for the interest on the one half of the maturities of the bonds of this county, as extended and for which application was made to the court by said company, through the attorney of its succession in the ownership of said bonds at the last April term of this court, and which application was laid
79 over for action till this term of the court. Now, on motion, said application was rejected and the court refused to issue said coupons for such extended maturities.

And also the following:

On motion, the quorum court is hereby appointed and authorized to settle with the railroad tax collectors, and make some disposition of the bonds & coupons taken up by said collectors, by cancellation or otherwise.

And also the following at July term, 1873.

In re railroad tax.

On motion, the court this day proceeded to levy a railroad tax to meet

the installment & interest falling due in the year 1873 to the Paducah & Memphis Railroad Company, whereupon the tax was ordered to be assessed at ten mills on the dollar on all the taxable property of the county, as returned for State & county taxation; this is to include all privileges that are taxed by the State as well as property, and in
80 assessing privileges the basis adopted by the State is to be used.

And also the following:

In re R. R. collector's report.

Came John G. Hall, railroad tax collector for the year 1869, and made the following report, which being unexcepted to, is in all things approved & confirmed.

To the honorable county court of Tipton County, Tenn.:

The undersigned railroad tax collector for Tipton County, for the year 1869, would respectfully report that he has collected on ¾ of the Miss. River Railroad tax since last report the sum of $350.00.

July 10th, 1873.

JOHN G. HALL,
R. R. Tax Collector for 1869.

August term, 1873, the following:

To the honorable county court of Tipton County, Tenn.:

The undersigned, R. R. tax collector for said county for the year 1869, would respectfully report that he has collected on said act since last report the sum of $15.65.

Which is respectfully submitted.

August 3, 1873.

JOHN G. HALL,
Tax Collector, 1869.

81 Which, being unexcepted to, is in all things approved and confirmed.

And also the following:

To the worshipful county court of Tipton County, Tennessee:

The undersigned, railroad tax collector, would respectfully report to your worshipful body that he has collected nine hundred dollars on the ¾ of 1871, also eleven hundred on the ¾ of 1872.

Respectfully,

August 5th, 1873.

J. C. WALKER,
R. R. Collector for Tipton Co.

Which report is in all things approved and confirmed.

October term, 1873, the following:

In re railroad tax, 1869.

To the worshipful county court:

Since the meeting of last court I have collected about $167.50 on the railroad tax books of 1869.

1869.

JOHN G. HALL,
R. R. T. C.,
Per JOHN GREEN HALL,
Deputy C.

Which report is approved & confirmed.

At January term 1874, the following:

James C. Walker, railroad tax collector 1871 & 1872, reported
82 having collected on 1871 $90.00, on 1872 $95.00, which report is confirmed.

At the July term, 1874, the following:

In the matter of the subscription of this county to the Miss. River R. W. Co.

Came into open court, Thos. C. Smith, The Rogers Locomotive and Machine Works, John T. Edmonds & Company, and Norton, Slaughter & Company, by their attorney, the holders of the bonds issued by this county to said Mississippi River Railway Company, and moved the court for a tax levy to meet so much thereof as may now be past due and unpaid, which motion was by the court overruled.

STATE OF TENNESSEE,
County of Tipton:

I, Richard S. Barrett, clerk of the county court of said county, do certify that the above and forgoing pages contain a full, true, and perfect copy of all the proceedings of the county court of said county in relation to the Mississippi River Railroad tax and bonds, as the same appears
83 from the records of said court now in my possession and custody.

Witness my hand and seal of said court, at office in Covington, this 24th day of November, A. D. 1874.

[L. S.]

RICH'D S. BARRET,
Clerk District Court of U. S.
for West Tennessee, at Memphis, Tenn.

THE ROGERS LOCOMOTIVE & MACHINE WORKS
vs.
TIPTON COUNTY. } #1693.

Defendant's counsel accept notice that plaintiff will offer this record as evidence on the trial thereof.

GEO. GANTT,
Of Counsel for Def't.

(Endorsed:) 1693. Rogers Locomotive, &c., vs. Tipton County. Filed April 20, '75. H. E. Andrews, clerk.

84 At the January term, 1869, of the county court of Tipton County, in the State of Tennessee, the following proceedings were had and appear of record, to wit:

Be it remembered that at a county court begun and held at the court house in the town of Covington, in and for the county of Tipton, on the first Monday in the month of January, A. D. 1869, it being the 4th day of said month—present and presiding, the worshipful John T. Douglas, J. P. and chairman, R. S. Wynn, L. B. Yarbro, J. C. Vaughan, W. A. Turnage, N. C. Hoffler, W. H. Wooten, W. A. Bowers, Wm. Coward, A. D. McQuisten, J. C. McLeister, Ben. Sherrod, J. R. McCall, J. S. Peete,

D. B. Boswell, J. W. Owen, and W. McIntosh, justices; D. C. Slaughter, sheriff, and Richard S. Barrett, clerk—when the following proceedings were had, to wit:

Ordered, that the court be adjourned until court in course.

JOHN T. DOUGLASS,
J. P. & Chairman.
J. W. OWEN, *J. P.*
WM. McINTOSH, *J. P.*

And at the February term, 1869, of said county court, the fol-
85 lowing proceedings were had and appear of record, to wit:

Be it remembered that at a county court begun and held in and for the county of Tipton and State of Tennessee, at the court-house in the town of Covington, on the first Monday in the month of February, A. D. 1869, it being the first day of said month—Present and presiding the worshipful John T. Douglas, J. P. & chairman; R. S. Winn, I. W. Owen, W. McIntosh, L. B. Yarbroh, Sam'l L. Taylor, J. C. Vaughan, Wm. A. Turnage, N. C. Hoflin, W. H. Wooten, W. A. Bowers, W. Coward, James McLister, Ben. Sherrod, & J. S. Peete, justices; D. C. Slaughter, sheriff, & Richard S. Barrett, clerk—when the following proceedings were had:

Sam'l R. Shelton this day presented in open court a commission from his excellency W. G. Brownlow, governor, etc., appointing said Sam'l R. Shelton to the office of justice of the peace in and for dist. No. 1, of this county, in the room of D. R. Town, removed, when, on motion, the said S. R. Shelton was duly qualified in open court as such officer.

86 This day came into open court Abraham S. Mitchell, president of the Mississippi Railroad, and filed here and exhibited his, the said A. S. Mitchell's, affidavit as such president as aforesaid, that the cost of grading and preparation of the road-bed for said railroad, on the estimate of the chief engineer thereof, through this county would exceed three hundred and eighty thousand dollars, and, upon motion of William McIntosh, justice, &c., and whereas by act of the general assembly of the State of Tennessee, passed the 25th day of February, A. D. 1867, the counties lying along the route of the Mississippi River Railroad Company are authorized to subscribe to the capital stock of said company an amount not exceeding two-thirds of the costs of the grading and preparation of the road-bed in each county respectively; and whereas from the oath of A. S. Mitchell, president of said company, filed with the clerk, and now to this court exhibited, it appears that the costs of the grading and preparation of the road-bed of said railroad through Tipton County, according
87 to the estimate of the engineer, will exceed three hundred and eighty ($380,000.00) thousand dollars: Now, therefore, all the justices named in the caption, to wit, Wm. Coward, John T. Douglas, Wm. McIntosh, W. A. Bowers, N. C. Hofler, Sam'l R. Shelton, L. B. Yarbroh, S. L. Taylor, I. W. Owen, W. H. Wooten, J. C. Vaughan, John S. Peete, Ben. Sherrod, & James McLister being present and voting in the affirmative, Ransom S. Winn & W. A. Turnage voting in the negative, it is ordered that the chairman of this court for and on behalf of the County of Tipton be, and he is hereby, instructed to subscribe the sum of two hundred thousand ($200,000) dollars to the capital stock of the Mississippi Railroad Company on the terms and conditions prescribed by the acts of the legislature aforesaid authorizing such subscription to be made. And it is further ordered by the court that an appropriation of two hundred ($200,000) thousand dollars be, and the same is hereby,

made for the purpose of assisting the Mississippi River Railroad in
88 the building of the said road through Tipton County, said appropriation to be made at the rate of forty thousand ($40,000) dollars per annum, payable in bonds maturing in one, two, three, four and five years, with interest at six (6) per cent. per annum, payable semi-annually, which bonds the chairman of this court is hereby authorized to issue immediately, signed by himself and countersigned by the clerk of this court. And it is further ordered by the court that a special tax be levied on the assessed value of the taxable property of the county, which tax shall be called the Mississippi River Railroad tax, and said tax shall be regularly levied in such amounts as shall meet the annual appropriations for the purpose of assisting in the building of the Mississippi River Railroad in Tipton County. And it is further ordered by the court that the chairman of this court be, and is hereby, directed to enter the subscription of Tipton County to the capital stock of the Mississippi River Railroad
89 Company for the sum of two hundred thousand ($200,000) dollars on the books of said company. It is further ordered by the court that John T. Douglas, Ben. Sherrod, and Wm. Coward, any two of whom may act, be and they are hereby authorized and appointed to represent the stock now subscribed by Tipton County in all meetings of the stockholders, and in all elections of directors of said Mississippi River Railroad Company, until further ordered by this court.

And at the April term, 1869, of said court, and on the first day of said term, the following proceedings were had and appear of record, to-wit:

Be it remembered that at a county court begun and held at the court-house in the town of Covington, in and for the county of Tipton, and State of Tennessee, on Monday, the 5th day of April, A. D. 1869, the same being the first Monday in said month. Present and presiding, the worshipful John T. Douglas, justice & chairman, Sam'l R. Shelton, R. S.
90 Wynne, Isaac W. Owen, Wm. McIntosh, L. B. Yarbro, Sam'l Taylor, D. B. Boswell, Joseph Vaughan, W. A. Turnage, N. C. Hoffler, Wm. H. Wooten, W. A. Bowers, Wm. Coward, James McLister, Ben. Sherrod, W. T. Rice, Jas. R. McCall, and John S. Peete, justices; David C. Slaughter, sheriff, and R. S. Barrett, clerk, when the following proceedings were had:

This day was presented in open court a commission from his excellency Wm. G. Brownlow, Governor of the State of Tennessee, appointing William S. Coward to the office of justice of the peace in district No. 4, of this county, when the said William S. Coward was duly qualified in open court as such justice.

This day was presented in open court a commission from his excellency D. W. C. Senter, Governor of the State of Tennessee, appointing Robert McLagan to the office of justice of the peace in district No. one, of this county, when the said Robert McLagan was duly qualified in open court as such justice.

And at the July term, 1869, of said county court, the following proceedings were had, and appear of record:

91 Be it remembered that at a county court, begun and held at the court-house in the town of Covington, in and for the county of Tipton, on Monday, the 5th day of July, A. D. 1869, it being the first Monday in said month—present and presiding, the worshipful John T. Douglas, J. P. and chairman, Samuel R. Shetton, Robert McLagan, Wm. McIntosh, I. W. Owen, Dan B. Boswell, J. C. Vaughan, L. B. Yarbro, W. A. Turnage, W. S. Coward, W. A. Bowers, James McLis-

ter, W. T. Rice, Ben Sherrod, and John S. Peete, justices, David C. Slaughter, sheriff, and Richard S. Barret, clerk—when the following proceedings were had, to wit:

Ordered by the court that the subscription heretofore made by the county of Tipton to the Mississippi River Railroad Co. be so modified, with the assent of said company, as that the interest on the bonds of Tipton County to be issued to said railroad company be payable annually on the first day of January in each year, instead of semi-annually, as provided in the order of subscription.

92 And afterwards, on the same day of said term, the following proceedings were had and appear of record, to wit, all the justices mentioned in the caption present and voting in the affirmative:

Ordered by the court, that for the purpose of paying the amount to fall due on the subscription of the county to the Mississippi River Railroad during the present year, a tax of two and one-quarter cents be, and the same is hereby, levied on each and every dollar's worth of taxable property within the county.

And afterwards, on the same day of said term of said court, the following proceedings were had and appear of record, to wit:

Resolved, That it is the sense of this court that the subscription of $200,000 made by this county to the Mississippi River Railroad be disposed of under section 1156 of the Code of Tennessee.

And at the July term, 1870, of said court the following proceedings were had and appear of record, to wit:

93 Be it remembered that at a county court, begun and held at the court-house in the town of Covington, in and for the county of Tipton, and State of Tennessee, on the 4th day of July, A. D. 1870, the same being the first Monday in said month—present and presiding, the worshipful Isaac W. Owen, J. P. & chairman, S. P. Bernard, John Billings, S. I. Bradshaw, W. S. Coward, Jesse S. Cochran, John T. Douglas, James F. Dickinson, M. Drummonds, John Linahan, J. C. McLeister, C. N. McFadden, W. H. McQuiston, I. C. Moore, H. C. McLain, I. R. McCall, E. W. Massey, John S. Peete, W. I. Rogers, S. R. Shelton, W. D. Smith, Ben Sherrod, Henry Sanford, Thos. Taylor, H. M. Turnage, Calvin Tucker, Isaac Wiseman, Wm. A. Yarbro, associate justices; Ben F. Locke, sheriff, and R. S. Barret, clerk—when the following proceedings were had, to wit:

On the first day of said term the following proceedings were had and appear of record:

94 On motion the court proceeded to consider the question of levying a tax to meet the Mississippi River Railroad bonds and coupons falling due this year, when it was ordered that no such tax be levied—John Billings, S. I. Bradshaw, W. S. Coward, I. S. Cochran, James F. Dickinson, M. Drummonds, John Linahan, J. C. McLister, C. N. McFadden, W. H. McQuiston, I. G. Moore, H. C. McCain, I. R. McCall, E. W. Massey, J. W. Owen, W. I. Rodgers, Henry Sanford, Thomas Taylor, H. M. Turnage, C. Tucker, and Isaac Wiseman, present and voting for such refusal, and S. P. Bernard, J. T. Douglas, John S. Peete, S. R. Shelton, W. D. Smith, Ben Sherrod, and W. A. Yarbro, voting for levying such tax.

And afterwards, on Tuesday, the second day of said July term, 1870, of said court, the following proceedings were had and appear of record, to wit:

(The word "void" being written across the following entry:)

Resolved by the county court of Tipton County, that we consider the bonds issued by this court at the February term, 1869, to the Miss.

River R. R., as an unwarranted ursurpation of power, it having been done without the consent of the people of this county or a majority of the magistrates in commission.

95 Resolved, 2d, that we refuse to levy any tax to meet the bonds issued or any part thereof, either interest or principal, now due, or hereafter to become due.

Resolved, 3d, that this court appoint a committee of seven, with power to act, to employ counsel, and to take any steps necessary and expedient to protect the people of this county against the burden imposed upon them by an unjust railroad tax.

And afterwards the following proceedings were had, and appear of record, to wit:

Be it remembered, that at a county court begun and held at the court-house in the town of Covington, in and for the county of Tipton, and the State of Tennessee, on the 2d day of October, A. D. 1871, the same being the first Monday of said month—present and presiding, the worshipful Charles H. Hill, J. P. & chairman; C. Angelo, J. S. Cochran, J. T. Douglas, J. G. Moore, W. McLelland, J. C. McLister, J. R. McCall, C. N. McFadden, L. Page, W. J. Rodgers, S. R. Shelton, C. Tucker, T. Taylor, T. J. Tuckness, Isaac Wiseman, W. A. Yarbro, J. C. Pace,

96 S. K. Drummonds, M. Herring, W. H. McQuiston and S. P. Bernard, associate justices of said county; Benjamin F. Lock, sheriff, and R. S. Barret, clerk—when the following proceedings were had, to wit:

And on the first day of said term of said court, the following proceedings were had, and appear of record, to wit:

Resolved by the county court of Tipton County, Tennessee, that we accept the proposition of the Mississippi River Railroad Company to extend the time for the payment of the county subscription to said company, which proposition is in the words and figures following, to wit:

Extract from the proceedings of the board of directors of the Mississippi River Railway Company.

MEMPHIS, TENNESSEE, *September 30th*, 1871.

C. H. Hill, of Tipton, offered the following resolution, which was adopted:

Whereas the county of Tipton has not provided means for the payment of her bonds and coupons issued to the Mississippi River Railway Company, to the amount of $200,000.00 and interest, (except to

97 the amount of dollars in coupons and bonds heretofore paid:) Now, therefore, it is hereby resolved, that Ex. Norton, esq., be, and he is hereby, appointed an agent for this company, to propose to said county of Tipton that this company will grant an extension of time for the payment of said bonds and interest, so that the said payments shall be extended to the period of ten years from the date of the bonds, in ten annual instalments, instead of the time they now have to run, this extension to apply to all bonds which this company owns or controls. But this proposition shall be made on condition that the county court of Tipton County shall immediately levy a tax, and proceed to its collection for the amount now due under this offer, and that they shall each year levy, collect, and promptly pay over the amount to fall due each year, as the same falls due during the whole period of this proposed extension; and in case of a failure to levy, collect, or promptly pay over said annual amount, then the remaining bonds to be-

98 come due, according to their original terms.

JOHN S. NORTON, *Secretary*

And it is hereby ordered by the court, that a tax of eighty-five cents on the one hundred dollars' worth of property, on both real and personal, to meet the first instalments due on the bonds issued to the Mississippi River Railroad Company, the following-named justices voting in the affirmative: C. H. Hill, Jesse S. Cotheran, John T. Douglas, W. McLelland, James R. McCall, C. N. McFadden, L. Page, S. R. Shelton, C. Tucker, Wm. A. Yarbro, Marshal Herring, W. W. McQuiston, S. P. Bernard—13; and the following voting in the negative: C. Angelo, John G. Moore, J. C. McLister, W. J. Rodgers, Thomas Taylor, T. J. Tucknis, J. C. Pace, S. K. Drummonds—8.

And afterwards, to wit, at the July term, 1872, of said court, the following proceedings were had and appear of record:

TUESDAY MORNING, *July 2d*, 1872.

Court met pursuant to adjournment—present and presiding, the worshipful J. T. Douglas, J. P. and chairman; J. S. Cothran, L.
99 Page, John Billings, Tom Taylor, W. S. Coward, C. Angelo, S. R. Shelton, W. A. Yarbro, S. P. Bernard, J. F. Dickson, S. K. Drummonds, J. G. Moore, W. McLelland, C. N. McFadden, J. G. McCain, J. C. Pace, Calvin Tucker, H. M. Turnage, Marshal Herring, and John T. Stockley, associate justices; Ben. F. Locke, sheriff, and R. S. Barret, clerk—when the following proceedings were had, to wit:

This day the court proceeded to levy a tax to meet the county subscription to said railroad for the amount falling due for the year 1872, all the justices named in the caption voting therefor. Ordered that said tax be fixed at one per cent. on all the taxable property.

And afterwards, at the April term, 1873, the following proceedings were had and appear of record, to wit:

TUESDAY MORNING, *April 8th*, 1873.

Court met pursuant to adjournment—present and presiding, the worshipful John T. Douglas, J. P. & chairman, L. Page, W. McLelland, S.
P. Bernard, S. R. Shelton, W. A. Yarbro, Isaac Wiseman, John
100 Billings, W. S. Coward, S. K. Drummonds, Calvin Tucker, H. M. Turnage, A. W. Smith, C. Angelo, M. Herring, T. J. Tucknis, Jas. R. McCall, J. C. Pace, Jesse S. Cothran, and A. A. Montgomery, associate justices; Ben. F. Locke, sheriff, & R. S. Barret, clerk—when the following proceedings were entered of record:

In re of the subscription of $200,000.00 to Mississippi River Railroad Company.

Came said company by its attorney and made application to have issued coupons or warrants for the interest on the one-half of the maturities of the bonds issued for said subscription in the same, and numbers, as were the original coupons thereto attached, and payable in the same manner and amounts annually as by the terms of the original bonds and the contract of extension. On motion, the same is laid over until the July term of this court.

And afterwards, to wit, at the July term, 1873, of said court the following proceedings were had and appear of record, to wit:

TUESDAY MORNING, *July 8th*, 1873.

Court met pursuant to adjournment—present and presiding, the

101 worshipful J. T. Douglas, J. P. & chairman; C. Angelo, S. P. Bernard, W. A. Yarbro, Sam'l R. Shelton, Isaac Wiseman, L. B. Yarbro, John Billings, W. S. Coward, L. H. Woodward, J. F. Dickson, S. K. Drummonds, Calvin Tucker, Wm. McLelland, A. W. Smith, Thomas Taylor, M. Herring, T. J. Tucknes, James R. McCall, J. C. Pace, L. Page, A. A. Montgomery, Jesse S. Cothran, associate justices; Ben. F. Locke, sheriff, and R. S. Barret, clerk—when the following proceedings were had, to wit:

And on the same day of said term of said court the following proceedings were had and appear of record, to wit:

In matter of the subscription of $200,000.00 to the Mississippi River Railway Company.

In the matter herein of the issuance of coupons for the interest on the one-half of the maturities of the bonds of this county, as extended and for which application was made to this court by said company, through the attorney of its successor in the ownership of said bonds, at the last April term of this court, and which application was laid over for action till this term of the court: Now, on motion, said application was rejected and the court refused to issue said coupons for such extended maturities.

102 And afterwards, on Wednesday of said term of said court, the following proceedings were had and appear of record, to wit:

WEDNESDAY MORNING, *July 9th*, 1873.

Court met pursuant to adjournment—present and presiding, John T. Douglas, J. P. & chairman; S. P. Bernard, Wm. A. Yarbro, Sam'l R. Shelton, Isaac Wiseman, L. B. Yarbro, John Billings, Wm. McLelland, Thomas Taylor, M. Herring, T. J. Tucknis, James R. McCall, J. C. Pace, L. Page, A. A. Montgomery, and Jesse L. Cothran, associate justices; Ben. T. Locke, sheriff, and R. S. Barret, clerk—when the following proceedings were had and entered of record:

In re railroad tax.

On motion, the court this day proceeded to levy a railroad tax to meet the instalment and interest falling due in the year 1873, to the Paducah and Memphis Railroad Company, whereupon the tax was ordered to be assessed at ten mills on the dollar on all the taxable property of the county, as returned for State and county taxation; this to include all privileges that were taxed by the State, as well as property, and
103 in assessing privileges the basis adopted by the State is to be used.

STATE OF TENNESSEE,
Tipton County:

I, Richard S. Barret, clerk of the county court of said county, certify that the foregoing 21 pages contain a full, true, and perfect transcript of the various entries therein set out as the same appear of record in the books of my office containing the records of said court, and that the said 21 pages, together with the other 48 pages of transcript hereto attached and certified under my hand and official seal, contain a full, true, & perfect copy of all the entries made in the records of said court

in the matter of the subscription to the Miss. River Railway Company.

In testimony of all of which I have hereunto set my hand and affixed the seal of said court, at office in Covington, this 5th day of April, 1875.

[L. S.] R. S. BARRET,
Clerk.

101 The defendant admitted that said Mississippi River Railway Company was on the 27th day of January, 1872, under the laws of Tennessee and Kentucky duly and legally consolidated with the Paducah and Gulf Railroad Company, a body corporate and politic, created under the statute of the commonwealth of Kentucky; and said two companies on that date, under the provisions of law and their respective charters, formed a new company under the corporate name of the Paducah and Memphis Railroad Company, and on same date said original companies, by proper deeds of conveyance, transferred and conveyed all their respective assets and properties to said new company the Paducah and Memphis Railroad Company.

The plaintiff then proved by said Barret that the defendant took legal counsel in the early part of the year of 1871, as to its liability on said subscription and bonds as to their constitutionality of said acts of assembly under which said subscription was made and said
105 bonds issued, and legal opinion thereon was given to defendant at the April session, 1871, of said county court; that in February, 1869, there were but 24 justices in said county.

The plaintiff then introduced Ex Norton, a witness, who testified as follows: I am now and have been ever since its organization the president of the Paducah and Memphis Railroad Company; prior to that time, I was and had been for many years the president of the Paducah and Gulph Railroad. Some time early in 1871, negotiations were begun by the Mississippi River Railway Company with the Paducah & Gulf R. R. Company, looking to a consolidation of the two companies into one, under the corporate name of the Paducah & Memphis Railroad Company. In October, 1871, I bore to the county court of Tipton county the proposition set out in the transcript of said court of said October term, 1871; this paper contained the entire and only proposition
106 from said company to said county that I ever bore to defendant. I stated to said court at that time, in open court, that I was president of the Paducah and Gulf Railroad Company, which owned and then operated a completed road from Paducah, Kentucky, to Troy in Tennessee, a distance of 63 miles, and that our said road was worth over $1,000,000.00, and was solvent and out of debt, all of which was and is true. I further stated to said court that there were pending propositions for consolidation between the Mississippi River R. R. Co. and the Paducah & Gulf R. R. Co., whereby the road would be completed from Memphis to Paducah; that I owned and controlled a majority of the stock of said Paducah & Gulf Road, I and my two brothers owning more than seven-tenths thereof. I further stated to said court that if there was any question as to the bonds of that county, or if they would not accept and comply with the said proposition of said Miss. River R. R. Co., then that I would not have anything
107 further to do with the consolidation, and would oppose it, and that my opposition would defeat it. The court accepted the said written proposition from the Mississippi River R. R. Co., and levied a tax to pay the first installment of said bonds. I reported to the direct-

ors and the stockholders of the Paducah & Gulf R. R. the proceedings of said county court as above related, and I favored the consolidation, and our stockholders' board voted for and ratified said consolidation. I was assured by members of the court that there would be no trouble in regard to Tipton County bonds, and I was urged to favor the consolidation, which I did, but I would not have so done had the court refused to levy the tax. Since that time Tipton County has paid to the Paducah & Memphis R. R. Co. on said bonds, and therefor has taken up bonds and coupons to the value of $38,046.96, which payments
108 commenced on 20th November, 1872, and continued until 18 July, 1873. Tipton County's stock in the Miss. River R. R. Co. was voted for the said consolidation, was voted in new company in January, 1872; and February, 1873, after the consolidation, the chairman of the county court of Tipton County surrendered its old stock in the Miss. River R. R. Co., and received new stock of same amount in the new company.

On the meeting of the stockholders of the new company in 1872, Mr. Chairman Douglas, who represented Tipton's stock, offered and voted for the resolution under which our mortgage for $1,951,000.00 was issued. Prior to said consolidation the Miss. R. R. Co. had effected a loan with Mr. McComb, pres'd't of the Southern R. R. Association, for about $166,000.00, and had on 16 January, 1871, executed its note therefor due at 12 months, and therefor had pledged as collateral $133,000 of said Tipton County bonds, with other collaterals, of which
109 those sued on herein are a part. This note was endorsed by said Southern R. R. Association and said McComb, and with said collaterals was passed to the banking-house of Drexel, Morgan & Co., of New York.

On 16th January, 1872, not being apprised of the action of the Miss. River R. R. Co., and our new company having as yet no organization, I executed the note of the Paducah & Gulf R. R. Co. of date the 16th December, 1871, and due at 90 days, and payable to said Southern R. R. Association, which they, with said collaterals, passed to said Drexel, Morgan & Co., and took up said note of Miss. R. R. Co.

On 19th March, 1872, the firm of Norton, Slaughter & Co., of which I was a member, paid said note of the Paducah & Gulf R. R., being $168,790.62, at request and for benefit of the Paducah & Memphis Railroad Company, and took up said collaterals, which were then and there placed with and held by said Norton, Slaughter & Co. as collaterals for the amount of their advances for said company. The bonds sued
110 on, with others, thus passed to Norton, Slaughter & Co. on 19th March, 1872. After that, on 15th March, 1873, the Paducah & Memphis R. R. Co. took up the bonds sued on herein by placing with Norton, Slaughter & Co. first mortgage bonds of the Paducah & Memphis R. R. Co., and on same date the company placed said bonds sued on herein with the plaintiffs as collateral on a contract for three engines, two of which were then delivered to the company, for which the company was to pay plaintiffs $11,750.00 for each engine, and since then the account has been settled by the absolute transfer of said bonds to plaintiff; that the map here shown to the court contains a full, true, and correct exhibit of said Paducah and Memphis road, showing the original roads, what was completed road prior to said consolidation, what completed since, what work done though not completed, and what remains to be done as yet: that at time of said consolidation there had
111 been but a few thousand dollars expended on building said Miss. River R. R. in Tipton County, and none of the lines completed;

that since said consolidation about a half a million dollars had been expended in Tipton County by Paducah & Memphis Railroad Company; that the road from Memphis to Covington, the county seat of Tipton County, a distance of 37 miles, had been built and equipped, and trains running thereon regularly ever since the 25th day of June, A. D. 1873—about 21 miles of said 37 are within said Tipton County; that said road has been graded and bridged and made ready for the cross-ties and rails from Covington to 1¼ miles north of Ripley, in Lauderdale County; that since said consolidation said road has been completed and equipped from Troy to Trimber, a distance of 15 miles, and trains run regularly from Paducah to Trimber, and said road has been graded and bridged and cross-tied ready for the rails from Trimber to Dyersburg, a
112 distance of 16 miles, and that nothing further than securing the right of way had been done on near 21 miles of the line of the road between Dyersburg and Ripley.

The plaintiff proved by Holmes Cummins that he was present in said county court in October, 1871, when said Norton appeared before it, and heard his statements to the court, and that the same were substantially as set forth in said Norton's testimony. The plaintiff requested the court to charge the jury that if they found the facts from the evidence to be that the bonds sued on were pledged by the Mississippi River Railroad Company before maturity, for a valuable consideration, without notice; and that the Paducah & Memphis R. R. Co., after the consolidation of the two companies, and after the respective companies had conveyed all their property and assets to the new corporation, and after it had issued its stock to the old stockholders, and had
113 mortgaged its property and commenced work on the road, took up the bonds in suit from Norton, Slaughter & Co. by giving other bonds for them, and then passed them to the plaintiffs after maturity for a valuable consideration, the court charges you that the Paducah & Memphis Railroad Company became and were holders of said bonds for value, and entitled them to the same protection by the law merchant that Norton, Slaughter & Co. had, from whom the company obtained them; and that the defence of bribery, fraud, threats, irregularity in the issuance of said bonds will not avail the defendant, and their verdict should be for the plaintiff; which charge, as requested, was not granted, and to this ruling of the court the plaintiff excepts.

The plaintiff further requested the court to charge the jury as follows, viz: That if they find from the evidence that the facts show that the bonds sued on were pledged by the Mississippi River R. R. Co. before maturity for a valuable consideration, without notice to the
114 pledger of any fraud, and that these bonds came to the possession of Norton, Slaughter & Co. before maturity for a valuable consideration, without notice, and that these bonds so came to the hands and possession of said Norton, Slaughter & Co. as aforesaid, at request and for benefit of the Paducah & Memphis Railroad Company, only to be held by said Norton, Slaughter & Co. as collateral for advances made and to be made by them for said P. & M. R. R. Co., and that after maturity said P. & M. R. R. Co. took up said bonds from said Norton, Slaughter & Co. by placing with them other collaterals in their stead, and then passed them to the plaintiffs for a valuable consideration, without notice, then that said P. & M. R. R. Co. became and were bona fide holders of said bonds, and entitled to all the protection of the law merchant that Norton, Slaughter & Co. were, and the P. & M. R. R. Co. so passing them to the plaintiffs as aforesaid, the plaintiffs would be bona fide holders of said bonds, and the defence of fraud,

115 bribery, threats, and irregularity in the issuance of said bonds would not avail the defendant, and that their verdict would be for the plaintiff which charge, as requested, was not granted, and to this ruling of the court the plaintiff excepted.

The plaintiff further requested the court to charge the jury as follows, viz: That if they find from the evidence that at the time that the bonds sued on came to the hands of the said Norton, Slaughter & Co. there was an agreement on the part of the defendant as set forth in the transcript of the minutes of said county court of October, 1871, for an extension of the maturity of these bonds, and that said bonds were so held by said Norton, Slaughter & Co. as collateral for the advances made by them for said P. & M. R. R. Co., and that said bonds were held by the several pledgers and by said P. & M. R. R. Co. without notice, and therefor they had paid value, and that the defendant continued to comply with and perform its part of said contract of October,
116 1871, until after the said bonds had passed to the plaintiffs; and that the plaintiffs took said bonds, paying value, without notice, and which the defendant was complying with its part of said contract of October, 1871, and that subsequent thereto the defendant failed to continue to comply with said contract of October, 1871, and refused further to comply, as appears by their resolution of July, 1873, then that plaintiffs would be bona fide holders of said bonds, and the defence of fraud, bribery, threats, and intimidation would not avail the defendant, and the plaintiffs can maintain this action, and the verdict will be for them: which request was not granted, and to this ruling of the court the plaintiffs excepted.

Among other things not excepted to, the court charged the jury as follows: On the request of the plaintiffs, the court charged the jury that if you credit the testimony, and from it believe that Mr. Norton, as president of the Paducah & Gulf R. R. Co., in October, 1871, appeared before a duly organized county court of Tipton county, and in
117 open court fully explained to it that a consolidation was contemplated between his company and the Mississippi River R. R. Co., and that such consolidation depended upon the fact whether the bonds in controversy were to be paid by the county, and whether it would proceed to levy a tax for the same, and then and there presented the proposition of the said Mississippi Company recited in the resolution of that date, passed by the said county court, and that said Paducah Company was then solvent and owned and operated a railroad from the town of Paducah, in Kentucky, to Troy, in Tennessee, and that no portion of the railroad in Tipton County was then completed, and that but a few thousand dollars had been expended in work thereon, and that the purpose of said consolidation was to complete said road in Tipton County, and to connect it with the line of said Paducah and Gulf road, and that said road has since been completed from the town of Covington, in said county,
118 to the city of Memphis, being a distance of 37 miles, twenty-one whereof are in said Tipton County, and that said Norton communicated to his company the action of said county court at its said October session of 1871, and that in consequence thereof and in reliance thereupon said consolidation took place, whereby said Paducah and Memphis Railroad was created, and that said latter company thereafter completed the road from Covington to Memphis, and has regularly run and operated the same from the 25th of June, 1873, to this date, and that the plaintiffs in this action, in the ordinary course of trade, and without any notice of any ill faith in the procuration of said bonds, gave full value therefor to the said Paducah and Memphis Railroad

Company, by furnishing engines to be employed on said road, and that said Paducah and Memphis Railroad Company received said bonds without any notice whatsoever of any fraud in their issuance
119 then the fact that one or more of the justices of said county court who originally voted for said subscription of stock were induced so to do by corrupt means, and all other proofs or matters of fraud, constitute no defence to this action: to which charge the defendant then and there excepted, and such exceptions were duly noted.

The defendant requested the court to charge the jury as follows:

1. "That if the railway procured the issuance of the bonds by bribery, fraud, and corruption, that they would be void in the hands of the railway just as if they had not been issued." Which was granted.

2. "That all persons taking them from the company with notice, or under circumstances to put the vendor on enquiry, would stand in no better plight than the railway company would." Which was also granted.

3. "That if the plaintiffs took them after due, they would stand like the railway company." Which was granted with this modifi-
120 cation, viz, unless the jury believe as stated in the request to charge and given by the court in favor of the plaintiffs.

4th. "That if it appears that there was actual fraud in procuring the bonds, then the plaintiffs would be bound to show that they were bona fide holders." Which was also granted.

5. 'A party may waive the fraud by subsequent acts, but in order to make this doctrine apply, it must appear that the party waiving was fully apprised of the fraud which he waives. He must know of the fraud, and, knowing, waive it." Which was granted with this modification: Although this is generally true, it has no application to this case if the jury believe as in the charge stated in favor of the plaintiff. If one citizen about to buy a demand against another applies to him in good faith to ascertain whether the demand will be paid, and is informed that it will be, and buys in reliance upon such information, the
121 party admitting his obligation will not be permitted to defend, although the admission was made in ignorance of a valid defence.

6th. "If before a contract which was void, which is no contract, had become a substituting and valid contract, a constitutional provision intervenes, which took away all power from one of the contracting parties to enter into the contract, then there could be no contract by ratification, because the party would be under disability of contracting either expressly or by ratification. Therefore, if the contract was void in its making, for fraud, and the facts of fraud were not known, and known waived, before May, 1870, when the new constitution was adopted, then there could be no contract by ratification or otherwise, as all power to make such a contract as this was then, by the mandate of the constitution, taken away from the county court." Which was also granted, with this modification: That although the general reasoning
122 of this request is correct in legal principle, still, if the jury believe as stated in the charge for the plaintiffs, the defendant will be estopped to set up fraud as a defence, after having induced their purchase by answering to an enquiry of whether they would be paid, that they would be. And if the jury believe such are the facts in this case, then fraud will not constitute a defence.

7th. "If the influences which procured the contract were afterwards successfully exerted in concealing the fraud and defeating its discovery and efforts to resist the contract, then there can be no such thing as a

waiver." Which is also granted with the same modifications as last above given to the 5th and 6th requests.

8th. "Communities may waive fraud, but more indulgence is extended to them than to individuals." Which is also granted with the same modifications as above given to the 5th and 6th requests.

123 9th. "Accepting the road and using it, and paying a part of the consideration in ignorance of the fraud by which a rate was produced will not be a waiver." Which is also granted with the same modifications as stated in the 5th and 6th requests.

Defendant objected to reading or offering the bonds sued on to jury, and for the following reasons:

1. The said bonds disclose upon their face that they were issued under the act of February 12th, 1869, which act was not passed until twelve days after the meeting of the county court of Tipton County which ordered the immediate issuance of the bonds in suit, and their immediate delivery to the railroad company.

2. The bonds are dated, and bear interest, as appears from their face, from the 1st day of January, 1869, when, the bonds likewise show, the act of the legislature under which they were issued was not passed until more than one month thereafter.

3. The 6th section of said act of Feb. 25th, 1867, did not author-
124 ize the issuance of the said bonds, because said act provides for the issuance of bonds only as follows: "And it shall be lawful for county courts, making subscription as herein provided, to issue short bonds to the railroad company in anticipation of the collection of the annual levies, if thereby construction of the work may be facilitated, &c."

4. The proceedings of said county court, at its February term, 1869, were at a time and by a tribunal not permitted by the constitution and laws of the State of Tennessee.

5. Said bonds purport, upon their face, to be issued by the county court of Tipton County, instead of the said county.

6. The acts of February 25th, 1867, and November 5th, 1867, under which said bonds purport on their face to have been issued, conflict with, and are repugnant to, section 8, article one, and section seven, article eleven, of the constitution of Tennessee, in force at the time of the passage of said acts, in this:

125 First. They are partial laws, applying only to five counties in the State and one corporation, and are not "the law of the land." Art. 1, section 8, of said constitution.

Second. Said acts suspend the general laws in the following particulars: 1st, they suspend the act passed 22d of January, 1862 (re-enacted in the code of Tennessee), which provides and requires all county subscriptions to capital stock of railroads to be made only after the vote of a majority of the legal voters of the county shall have been obtained therefor, and not otherwise; 2d, said acts of 1869 also suspend the general law of 1835, ch. , section , and the sections of the code passed in 1858, requiring all county taxation over fifty dollars to be imposed by the quarterly county court, a majority of all the justices of the peace of the county being required to vote affirmatively therefor, they being
126 the sole county agency for taxation, such taxation to be imposed at the first annual quarterly term of such court, or if not then imposed, at the next regular quarterly term; and (these acts of 1867) substituting a majority of a majority of "justices in commission" for a majority of all the justices of the peace voting affirmatively, and (the acts of 1867) authorized a majority of a majority of such "justices in commission" to impose taxation over fifty dollars, and gave power to impose such taxa-

tion in violation of the general law, which forbade such taxation at a called term or a monthly term. (Pope vs. Phifer, 7 Heiskell R.)

3d. And said acts of 1867 also suspended the general law for the benefit of a single railway corporation, the said acts of February 25th, 1867, and November 5th, 1857, being professedly so by its caption and recitals.

4. Said acts of 1867 also discriminated against railway corporations which at the time had been incorporated to construct railroads
127 through the same counties in which the line of said Mississippi River Railway Company, among which corporations so discriminated against was the Tennessee Central Railroad Company, incorporated by the legislature of Tennessee in 1848 and in 1850, and other railroad corporations; and said acts of 1867 gave rights, privileges, immunities, and exemptions to said Mississippi River Railway which they did not extend to the other railroad companies and corporations last above named.

5. And because said acts of 1867 were not, in fact, nor were they designed to be, either general or permanent, but on the contrary were designed, as they disclose on their face, to be called into exercise but on a single occasion, and then solely to relieve and exempt a particular corporation from the restraints and operation of the general law, by way of benefit and exclusive privilege to that corporation.

128 6. That said acts of 1867 were in as proper sense part of the charter of the said Mississippi River Railway Company. Each and all of which objections were disallow' by the court.

Def't objected to the reading of the records of the proceedings of Tipton County court in regard to the subscription & bonds issued to the Miss. River Railway Co., so far as they occur after May, 1870, if read for the purpose of showing ratification, manner, acquiescence, or estoppal on the part of the county, because, after May, 1870, the acts of the county court could in no manner whatever bind the county or make it liable for a railroad subscription or bonds as to which it was not then already liable, the whole question having been taken by the constitution of the State of May, 1870, away from the county court and left with the people by popular vote; which objection was overruled, and
129 the part of the record and proceedings objected to was read in evidence.

Exception to the charge.

1. That there was no proposition before the county court in Oct., 1871, as to the consolidation of the Miss. River & Gulf & Paducah Railroad, the proposition being confined, as the record shows, to the Miss. River Railway, and the undertaking being to that company alone, as the record shows, and not to the Gulf & Paducah Road.

2. Because assurances by members of the county court at the time stated in response to Mr. Norton's statement, as president of the Gulf & Paducah Road, that he would not consent to the consolidation contemplated between the two roads unless the proposition of the Miss. River Railroad, that day submitted and acted on by the said county court, was carried out by payment of the bonds, could not bind the county, although such assurances were reported by Norton,
130 as president, to his co., and although he and his co. did act on them, and without them would not have made the consolidation.

1. The county court, by a record and vote by the ayes and noes of

the majority of all the justices of the county, was then without power to bind the county by such a contract.

2. Verbal assurances of some of the justices to that effect would be nollity because not the act of the court, and not in form to bind the county if power existed to do so.

3. Such assurances were *now* in the scope of the agency of the justices giving the same or of the county court.

4. There was then no pending offer of consolidation to the county court, and what Norton said and the assurances of some of the justices in reply, were wholly irrelevant to the question pending before the county court at that time, and evidence thereof is irrelevant on this trial.

131 5. Because the charge withdrew, in effect, the question of fraud from the jury and ordered a verdict for plaintiff if the jury credited the testimony of Norton, which the court assumed, if believed, established as a fact that the consolidation was made by the Paducah & Gulf Road on the faith of such assurances, and, without them, would not have been made.

6. Because one of the railway companies to the fraud was one of the two roads that consolidated, and, ot course, knew its own frauds, and this was, of necessity, knowledge to the consolidated concern.

7. Because Jno. P. Douglas, a director in the consolidated road, who aided the consolidation, knew of the frauds, and knowledge to him was knowledge to the company in which he was a director.

Whereupon this bill of exceptions was tendered to the court, and signed, sealed, and made a part of the record.

H. H. EMMONS,
Circuit Judge.

132 (Endorsed:) No. 1693. Circuit court of the United States, western district of Tennessee. Rogers Locomotive and Machine Works vs. Tipton County. Bill of exceptions. Filed May 19, 1876. H. E. Andrews, clerk. L. H. Pillsbury, D. C.

133 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial district thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1874, at the Federal court-rooms, in the city of Memphis, on, to wit, the 17th day of April, 1875, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693.

Comes the defendant and presents its bill of exceptions in this cause, which is signed and sealed by the court and ordered to be filed and made a part of the record of this court, and the same is accordingly done.

134 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its May term, A. D. 1875, at the Federal court-rooms in the city of Memphis, on, to wit, the 21 day of June, 1875, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS } 1693.
vs.
TIPTON COUNTY.

By agreement of counsel the motions for new trial held under advisement by the circuit judge are continued to await the action of the circuit judge.

135 *Justices' commissions.*

Commission of John T. Douglas.

State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas a vacancy has occurred in the office of justice of the peace in the 1st civil dist. of Tipton County: Now, therefore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the power and authority in me vested, do appoint and commission John T. Douglas to fill said office of justice of the peace in said 1st civil dist. of Tipton County until his successor shall have been chosen and qualified, and do empower him to execute and fulfill the duties of the same agreeably to the constitution and laws, with all the privileges and emoluments thereunto appertaining.

In testimony whereof, I, William G. Brownlow, governor of the State of Tennessee, have hereunto set my hand and caused the great
136 seal of the State to be affixed, at Nashville, this 17th day of October, A. D. 1866.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER,
Secretary of State.

Samuel L. Taylor.

State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas a vacancy has occurred in the office of justice of the peace for the county of Tipton, dist. No. 2; now, therefore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the power and authority in me vested, do appoint and commission Samuel L. Taylor to fill said office of justice of the peace for said county of Tipton until his successor shall have been chosen and qualified, and do empower him to execute and fulfill the duties of the same
137 agreeably to the constitution and laws, with all the powers, privileges, and emoluments thereunto appertaining.

In testimony whereof I, William G. Brownlow, governor of the State of Tennessee, have hereunto set my hand and caused the great seal of the State to be affixed at Nashville this 24 day of Dec., A. D. 1866.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER,
Secretary of State.

Joseph Vaughn.

State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas a vacancy has occurred in the office of justice

of the peace in the third civil district of Tipton county; now, therefore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the power and authority in me vested, do commission Joseph
138 Vaughn to fill said office of justice of the peace agreeably to the constitution and laws, during the term and with all the powers, privileges and emoluments thereunto appertaining by law.

In testimony whereof I, William G. Brownlow, governor of the State of Tennessee, have hereunto set my hand and caused the great seal of the State to be affixed at Nashville this 20th day of November, A. D 1867.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER,
Secretary of State.

S. R. Shelton.

State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas a vacancy has occurred in the office of justice of the peace in first civil district of Tipton county by the removal from the said district D. K. Town; now, therefore, I, William G. Brown-
139 low, governor of the State of Tennessee, by virtue of the power and authority in me vested, do commission S. R. Shelton to fill said office of justice of the peace agreeably to the constitution and laws during the term and with all the powers, privileges and emoluments thereunto appertaining by law.

In testimony whereof I, William G. Brownlow, governor of the State of Tennessee, have hereunto set my hand and caused the great seal of the State to be affixed at Nashville this 26th day of January, A. D. 1869.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER,
Secretary of State.

State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas a vacancy has occurred in the office of justice of the peace in district No. 6 of our county of Tipton; now, there-
140 fore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the power and authority in me vested, do appoint and commission W. A. Bowers to fill said office of justice of the peace for said county of Tipton until his successor shall have been chosen and qualified, and do empower him to execute and fulfill the duties of the same agreeably to the constitution and laws, with all the powers, privileges and emoluments thereunto appertaining.

In testimony whereof I, William G. Brownlow, governor of the State of Tennessee, have caused the great seal of the State to be affixed at Nashville, this 24th day of Dec., A. D. 1866.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER,
Secretary of State.

W. A. Turnage.

State of Tennessee to all who shall see these presents, greeting:

Whereas it appears from the official returns of an election held
141 in our county of Tipton, on the 3d day of March, 1866, for the purpose of electing a justice of the peace for said county, in the 4th civil district thereof, W. A. Turnage received the highest number of votes polled in said election, and was duly and constitutionally elected: Therefore I, William G. Brownlow, governor of the State of Tennessee, do hereby commission the said W. A. Turnage justice of the peace for the county and State aforesaid, during the term, and with all the powers, privileges, and emoluments authorized by law.

In testimony whereof I, William G. Brownlow, governor as aforesaid, have hereunto set my hand, and caused the great seal of the State to be affixed, at the department in Nashville, on this 22d day of April, 1867.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER.
Secretary of State.

142 State of Tennessee to all who shall see these presents, greeting:

Know ye, that whereas vacancies exist in the following offices of justices of the peace for the county of Tipton, to wit: In civil district No. 1, three vacancies; in district No. 2, two vacancies; in district No. 3, two vacancies; in district No. 4, two vacancies; in district No. 5, two vacancies; in district No. 6, two vacancies; in district No. 7, two vacancies; in district No. 8, two vacancies; in district No. 9, two vacancies; in district No. 10, two vacancies; in district No. 11, two vacancies; in district No. 12, two vacancies; in district No. , vacane . And whereas a necessity exists that said offices should be filled: Now, therefore, I, William G. Brownlow, governor of the State of Tennessee, by virtue of the power in me vested, do appoint J. W. H. Townsend, Peter Fuzar, Ransom S. Winn, Alexander Huffman, Isaac Wise-
143 man, Henry Billings, James Overall, John Stokes, Charles C. Freeman, Nathan Hofler, N. Byrd, T. B. Hunt, William A. Turnage, William H. Wooten, William Coward, Alexander McQuintan, James M. Leister, A. D. Clement, Thomas P. Rice, James R. McCall, Sam'l W. Green, James Denceford, William McIntosh, J. W. Owen, C. A. Stockley, C. Angleo, to fill the said offices of justices of the peace for said county of Tipton, until their successors shall have been chosen and qualified, and do empower them, and each of them, to fulfill the duties of the same agreeably to the constitution and laws, with all the powers, privileges, and emoluments thereunto appertaining.

In testimony whereof I, William G. Brownlow, governor of the State of Tennessee, have hereunto set my hand, and caused the great seal of the State to be affixed, at the department in Nashville, this 7th day of July, A. D. 1865.

[L. S.] W. G. BROWNLOW.

By the governor.

A. J. FLETCHER.
Secretary of State.

144 STATE OF TENNESSEE.
County of Tipton:

I, Richard S. Barret, clerk of the county court of said county, do cer-

tify that the foregoing pages contains a full, true, and perfect copy of the commissions of John T. Douglas, Samuel L. Taylor, Joseph Vaughn, S. R. Shelton, W. A. Bowers, W. A. Turnage, Ransom S. Winn, Nathan Hofler, Wm. H. Wooten, William Coward, James McLeister, Wm. McIntosh, and J. W. Owen, as the same now appears in my office. And I further certify that after diligent and careful, but ineffectual search the commissions of L. B. Yarbro, John S. Peete, and Benj. Sherrod cannot be found, but are lost or mislaid.

Witness my hand and the seal of said court, at office in Covington, this 24th day of November, A. D. 1874.

[L. S.] RICH'D S. BARRET, *Clerk.*

145 (Endorsed:) No. 1693. Circuit court of the United States, western district of Tennessee. Copy of justices' commissions. Filed May 16th, 1876. H. E. Andrews, clerk. L. H. Pillsbury, d. c.

146 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its May term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 16th day of May, 1876, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS *vs.* TIPTON COUNTY. } 1693.

Came the parties by the respective attorneys, and thereupon, on motion, it is ordered that a jury come; and therefore came a jury of good and lawful men, to wit, F. C. Huse, R. C. Gist, J. M. Hill, W. B. Miller, Julius Behr, A. H. Merrill, T. B. Dillard, L. B. Norment, J. P. Cucey, J. M. Shaw, W. W. Humphrey, & W. Y. Cirode, who, being duly elected, were tried and sworn well and truly to try the issues joined herein between the plaintiff & the defendant, and a true verdict to render according to the evidence. And thereupon the trial of the cause is continued till to morrow morning.

147 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its May term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 18th day of May, 1876, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS *vs.* TIPTON COUNTY. } 1693.

Came the parties by their attorneys, and came also the jury heretofore empannelled in this cause, and thereupon the trial of the same was resumed, and there not being sufficient time to conclude the said trial on to-day, it is continued till to-morrow morning at 9 o'clock.

148 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its May term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 19th day of May, 1876, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS } 1693.
vs.
TIPTON COUNTY.

Came on again this cause, and came the parties by their attorneys, and also the jury heretofore empannelled in this cause, who, having heard the testimony and listened to the charge of the court as to the law of the case, upon their oaths do say the' find for the plaintiffs the issues herein, and fix the amount for which defendant is indebted to plaintiff, principal, ($25,000.00) twenty five thousand dollars, and interest ($4,250.00) forty-two hundred and fifty dollars. It is therefore
149 considered by the court that the plaintiff herein do have and recover of and from the said defendant, the County of Tipton, the amount of said verdict, to wit, the sum of twenty-five thousand dollars ($25,000.00) principal and four thousand and two hundred and fifty dollars interest, together with the costs of this suit, for which let execution issue.

150 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its May term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 19th day of May, 1876, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS } 1693.
vs.
TIPTON COUNTY.

Comes the defendant and moves the court for a new trial herein, which motion is taken under advisement by the court.

151 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court begun and held for its May term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 20th day of May, 1876, and days subsequent thereto, in the following cause:

THE ROGERS LOCOMOTIVE AND MACHINE WORKS } 1693.
vs.
TIPTON COUNTY.

In this cause, on motion, it is ordered by the court that the order entered herein May 19, 1876, as to the pending motion for a new trial herein, be so modified as follows: That the motion for a new trial is

argued by counsel and heard by the presiding judge, and the same is taken under advisement by his honor the circuit judge for determination.

152 *Decision of Judge Emmons overruling motion for new trials.*

In the circuit court of the United States for the western district of Tennessee.

THE ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } No. 1693.

EX NORTON-SLAUGHTER, COMPOSING FIRM of Norton, Slaughter & Co.,
vs.
TIPTON COUNTY. } No. 1733.

It is with great regret that I am compelled to announce to counsel my utter inability to avail myself of the learned arguments they have laid before me for an examination and determination of these cases. Repeated attempts show it to be impossible. Had they reached me at an earlier date they would have received the consideration I was so anxious to give them. It was not until in October last that the defendant's briefs were received. The fall circuits had then commenced, and up to the period when failing health disqualified me for all judicial labors I was constantly engaged. I the more regret this because in the accidents of their history these causes will go to the court of last resort with
153 a judgment here in disregard of the unanimous opinion of the supreme court of the State upon the precise point involved. It does so in violation of the rule we have established for ourselves, never to render a judgment in conflict with such an opinion without giving a full written statement of the reasons of our disagreement. Every dictate of propriety demands such a course. Especially is this so in reference to all those questions involving, as this one does, the construction of local constitutions and statutes, a class of questions in reference to which as an almost universal rule the judgment of the State tribunal would be adopted here. We are entirely confident, however, the peculiar circumstances of these cases will justify our formal overruling the motions for a new trial, that the questions may be reviewed by the Supreme Court of the United States. The cases have been twice tried, and including the arguments for new trials and the various motions which have been submitted, have occupied the better portion of a month of the court's time. A bill of exceptions in each case quite satisfactory to each
154 party, fully presenting every question of law, is of record. To grant a new trial now without examinations and without a written judgment would benefit neither party. The same issues upon the same records would again be presented and go to the court above. The only purpose of re examination of the points ruled upon the trial was that the parties might have in an important case what the citizen is entitled to, the reasons why a court renders judgment against him, and be thus enabled in the light of those reasons to shape the future conduct of his cause. But more particularly in causes of this nature where there is an apparent conflict between two tribunals, each having the right to decide the same question, it was desired that an opportunity should be offered

this court, with far more deliberation than the exigencies of the trial afforded, of determining whether it would assume the high responsibility of pronouncing erroneous the judgment of the supreme court of Tennessee. To this end the rulings at the trial were pro forma, the in-
155 tention being to reconcile them all upon the present motions, uninfluenced by the fact that they had already been decided. If upon such consideration we had any serious doubt of what we had ruled, that doubt, out of respect to the State court, would have been given in favor of defendant. A new trial would have been granted unless the parties, satisfied with the present records for the purposes of review, had consented that the verdicts should stand. This is our invariable course in reference to judgments of the State courts where their rectitude is brought in question in this. At the trial we followed pretty strong impressions in favor of the plaintiffs. But for our thorough respect for the State judgment deciding the contrary, we should not have entertained serious doubt of the constitutionality of the law authorizing Tipton County to issue these bonds. The larger knowledge of local laws and their practical construction by judges who have grown up under them, entitles their decisions to the very highest
156 consideration, and demands what we had hoped to give in this instance, a most painstaking and thorough examination before they are disregarded. Impaired health rendering this impossible, it will not be deemed wanting in respect to the State tribunal that we overrule the motions for new trials, adhering to the rulings we have made not because we have re-examined them and affirm them with confidence, but because it will subserve the interest of both plaintiffs and defendant to suffer the records so painstakingly prepared to go to Supreme Court as they are.

We thank the counsel for the fullness with which they have laid before us answers to the several questions we put at the trial relating to past judicial and legislative action in the State in reference to similar legislation. We deem this of primary importance, as the question here is quite as much what had been the practical construction of the constitution—what had the citizen a right from public action to believe it meant—as what may be its possible interpretation upon a now
157 critical and novel reading. The motions for a new trial are overruled, and final judgments upon motion will be entered upon the verdicts.

January 9th, 1877.

H. H. EMMONS, *Judge.*

(Endorsed:) 1693, 1733, 1738. U. S. circuit court W. district of Tennessee. Rogers Locomotive and Machine Works vs. Tipton County. Norton, Slaughter & Co. vs. Tipton County. Decision of Judge Emmons overruling motion for new trials. Filed Jan. 18, 1877. H. E. Andrews, clerk, by L. H. Pillsbury, D. C.

158 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court begun and held for its November term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 18th day of January, 1877, and days subsequent thereto, in the following cause:

THE ROGERS LOCOMOTIVE AND MACHINE Works
vs.
TIPTON COUNTY, TENNESSEE. } 1693.

In this cause a judgment having been rendered on the 19th day of May, 1876, in favor of the plaintiff and against the defendant, Tipton County, for the sum of twenty nine thousand two hundred and fifty dollars and costs of the cause, and a motion for a new trial having been made at the same term of the court before the Hon. H. H. Emmons, judge presiding, and the same continued under advisement to the present term of this court, and said Emmons, judge aforesaid, having sent to this court his written opinion ordering such motion for a new trial to be overruled :

159 It is therefore ordered that said motion for a new trial be overruled, and that the judgment heretofore entered in this cause stand and be in full force and effect from this date.

160 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1876, at the Federal court-rooms in the city of Memphis, on, to wit, the 8th day of February, 1877, and days subsequent thereto, in the following cause :

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693. Law docket.

In this cause comes the defendant, Tipton County, by its attorney, and prays a writ of error from the judgment herein to the next term of the Supreme Court of the United States; and it appearing that on the 22d day of March, 1875, at a former term of this court, there was judgment rendered for the plaintiffs in this case against the defendant for the sum of twenty eight thousand three hundred and forty dollars with interest till paid, together with the costs of the cause, at said term in

161 March of this court, exceptions were taken by the defendant, which were signed by the court, and that at said term in March, 1875, of this court the defendant moved the court for a new trial in this cause, which was duly entered of record, and that said motion for a new trial was continued and taken under advisement by the court until the 18th of January, 1877 (the present term of this court), when said motion for a new trial was overruled by the court, and said judgment ordered to have effect and to be in force from the 18th January, 1877. And it appearing that the amount involved is over five thousand dollars, and the defendant having this day prayed for a writ of error to the next term of the Supreme Court of the United States, in the presence of the plaintiff's counsel, it is ordered that said defendant's prayer for said writ of error be granted upon condition that defendant execute bond with good and approved security in the sum of five hundred dollars payable to the plaintiffs and conditioned as the law directs.

162 And thereupon the defendant executed said bond in the sum of five hundred dollars, with S. E. Stephenson and W. M. Butler as securities.

Order of court.

FEBRUARY 16, 1877.

In the above cause, for satisfactory reasons to the court appearing, it is hereby ordered by the court that execution of the judgment heretofore rendered in the above cause do issue forthwith.

163 Circuit court of the United States for the western district of Tennessee.

ROGERS LOCOMOTIVE AND MACHINE WORKS *vs.* TIPTON COUNTY. } No. 1693.

Know all men by these presents that we, Tipton County (N. W. Baptist, chairman), as principal, and S. E. Stephenson & W. M. Butler, as sureties, are held and firmly bound unto the Rogers Locomotive and Machine Works in the sum of five hundred dollars, to be paid to said Rogers Locomotive and Machine Works, to which payment well and truly to be made, we bind ourselves, and our heirs, executors, administrators, and personal representatives, jointly and severally, firmly by these presents, this 8th day of February, 1877.

The condition of the above obligation is as follows: Whereas said County of Tipton has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by said circuit court, now if *if* the above-named
164 County of Tipton shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its pleas, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this 8th day of February, A. D. 1877.

TIPTON COUNTY,
By N. W. BAPTIST, [SEAL.]
Chairman of County Court.
W. M. BUTLER. [SEAL.]
S. E. STEPHENSON. [SEAL.]

The above-named S. E. Stephenson and W. M. Butler, being by me duly sworn, says, each for himself, that he is worth the sum of $1,000 in unencumbered real estate, in the county of Tipton, in his own name and right and subject to execution.

W. M. BUTLER.
S. E. STEPHENSON.

Subscribed & sworn to before me this 8th day of February, 1877.

L. H. PILLSBURY,
Deputy Clerk.

The foregoing bond is approved.

CONNALLY F. TRIGG,
Judge, &c.

165 (Endorsed:) No. 1693. Circuit court of the United States, western district of Tennessee. Rogers Locomotive and Machine Works vs. Tipton County. Writ of error bond. Filed Feb. 8, 1877. H. E. Andrews, clerk.

166 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 16th day of February, 1877, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY. } 1693.

In the above causes, for satisfactory reasons to the court appearing, it is hereby ordered by the court that execution on the judgments heretofore rendered in the above causes do issue forthwith.

167 UNITED STATES OF AMERICA,
District of West Tennessee:

The President of the United States to the marshal of said district, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of Tipton County, in State of Tennessee (if to be found in your district), you cause to be made the sum of twenty-nine thousand two hundred and fifty (29,250.00) dollars and cents, together with two hundred & eleven $\frac{25}{100}$ dollars and cents, costs, the fees herein endorsed, which the Rogers Locomotive and Machine Works lately, in the circuit court of the United States for the district aforesaid, at November term, 1875, recovered against it for debt, damages, and costs, whereof the said defendant convicted, as appears to us of record, and have you these moneys, with interest until paid, ready to render before the judge of said court, at a court to be holden at the court-house in the city of Memphis, on the fourth Monday in
168 May, 1875, to the said plaintiff for his debt, damages, and costs. Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and seal of said circuit court, the 20th day of February, 1877.

[L. S.]

H. E. ANDREWS, *Clerk.*
L. H. PILLSBURY, *D. C.*

Judgment the 22d day of March, 1875	$29,250 00	
Docket fee		$20
Clerk's fees		118 35
Marshal's fees		65 40
Deposition		12 50
Clerk's additional, taking depositions		5
Marshals		
	$29,250 00	$221 25

H. E. ANDREWS, *Clerk.*
L. H. PILLSBURY, *D. C.*

(Endorsed:) No. 1693. Circuit court of the United States, district of west Tennessee. November term, 1876. Rogers Locomotive and
169 Machine Works vs. Tipton County. Fieri facias issued 20th day of February, 1877. Jud't 22d day of March, 1875, $29,250.00. Costs, 221.25.

COVINGTON, TENN., *Feb'y* 24, 1877.

On said date I made demand personally upon W. N. Baptist, chairman of county court of Tipton Co., Tenn., and R. S. Barret, clerk county court of Tipton county, Tenn., for satisfaction of judgment, interest, & costs herein, whereupon they made answer that they had neither funds or property wherewith to satisfy this writ, and this writ is accordingly returned unsatisfied.

L. B. EATON, *U. S. M.*
By S. D. BELVATE, *Dep.*

Ret'd & filed Feb'y 26, 1877.

H. E. ANDREWS, *Clerk.*
By L. H. PILLSBURY, *D. C.*

HUMES & POSTON,
Attorneys for Plaintiff.

170 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1876, at the Federal court-rooms in the city of Memphis, on, to wit, the 10th day of March, 1877, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS *vs.* TIPTON COUNTY. } 1693.

In these causes, it appearing that on the 8th day of February, 1877, orders were entered herein granting writs of error and taking bonds for security and reciting other facts, and it appearing that such orders were unadvisedly entered, now, upon motion of plaintiffs in each of said causes, said orders having been entered at this term of the court, are vacated and set aside and for naught held, and the decrees entered herein on the eighteenth day of January, 1877, are declared to be in full force and effect, to which orders the defendants, by their counsel, severally except.

171 United States circuit court, western district of Tennessee.

Proceedings had in the circuit court of the United States for the sixth judicial circuit thereof, western district of Tennessee, at a regular term of said court, begun and held for its November term, A. D. 1876, at the Federal court rooms in the city of Memphis, on, to wit, the 10th day of March, 1877, and days subsequent thereto, in the following cause:

ROGERS LOCOMOTIVE AND MACHINE WORKS *vs.* TIPTON COUNTY.

This cause came on to be heard upon the motion of the defendant, Tipton County, to grant the writ of fieri facias issued in this cause on the 20th day of February, 1877, which motion being heard and understood by the court, and the court being of opinion that said writ was prematurely issued, it is hereby ordered by the court that said motion be allowed, and the said writ of fieri facias is hereby ordered to be quashed without prejudice.

172 Supreme Court of the United States.

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY, TENNESSEE.

Know all men by these presents that we, Tipton County, Emerson Etheridge, and W. W. McDowell, are held and firmly bound unto the Rogers Locomotive and Machine Works in the sum of five hundred dollars, to be paid to the said Rogers Locomotive and Machine Works, its executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this thirteenth day of March, 1877.

Whereas the above-named Tipton County hath prosecuted a
173 writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the circuit court of the United States for the western district of Tennessee.

Now, therefore, the consideration of this obligation is such, that if the above-named Tipton County shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

TIPTON COUNTY,
By its attorney, EM. ETHERIDGE. [L. S]
EM. ETHERIDGE. [L. S.]
W. W. McDOWELL. [L. S.]

I certify that the foregoing bond was acknowledged before me, and that the security is sufficient.

CONNALLY F. TRIGG,
U. S. District Judge.

(Endorsed:) No. 1693. Circuit court of the United States, western district of Tennessee. Rogers Locomotive and Machine Works vs. Tipton County. Bond. Filed Mar. 13, 1877. H. E. Andrews, clerk.

174 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of West Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The Rogers Locomotive & Machine Works and Tipton County, a manifest error hath happened, to the great damage of the said defendant, Tipton County, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the paties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning
175 the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 2d Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct

that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirteenth day of March, in the year of our Lord one thousand eight hundred and seventy seven.

[SEAL.] HORACE E. ANDREWS,
Clerk of the Circuit Court of the United States for the Western District of Tennessee.

176 UNITED STATES OF AMERICA, *ss:*

To the Rogers Locomotive and Machine Works, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Tennessee, wherein Tipton County is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this thirteenth day of March,
177 in the year of our Lord one thousand eight hundred & seventy-seven.

CONNALLY F. TRIGG,
U. S. District Judge, &c.

Service of citation herein acknowledged this March 16th, 1877.
HUMES & POSTON,
Attorneys for Rogers Locomotive & Machine Works.

178 THE UNITED STATES OF AMERICA,
Sixth Circuit and District of West Tennessee:

I, Horace E. Andrews, clerk of the circuit court of the United States for said district of West Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect and correct copy of the original record and proceedings, except bill of exceptions filed on motion for new trial, which motion prevailing, clerk has omitted, in said court, as the same now appears of record and upon the files in my office, in the following cause, to wit, Rogers Locomotive and Machine Works vs. Tipton County.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office in the city of Memphis, this 10th day of July, A. D. 1877, and of the Independence of the United States the 101st year.

[SEAL.] H. E. ANDREWS, *Clerk.*
L. H. PILLSBURY, *D. C.*

(Indorsed:) No. 1693. Circuit court of the United States, district of West Tennessee. Rogers Locomotive and Machine Works vs. Tipton County. Transcript of record and proceedings.

(Indorsement on cover:) No. 334. Tipton County, pl'ff in error, vs. The Rogers Locomotive and Machine Works. W. Tennessee C. C. U. S. Filed 27 October, 1877.

OFFICE SUPREME COURT U. S.
FILED
NOV 16 1880
JAMES H. McKENNEY, Clerk.

United States Supreme Court.

TIPTON COUNTY,
Plaintiff in Error.

—vs.—

THE ROGERS LOCOMOTIVE AND MACHINE WORKS.

No. 334.

In Error to the Circuit Court of the United States for the Western District of Tennessee.

Brief of Gantt & Etheridge,

For Plaintiff in Error.

United States Supreme Court.

TIPTON COUNTY,
Plaintiff in Error.
—vs.—
THE ROGERS LOCOMOTIVE AND MACHINE WORKS.

No. 334.

In Error to the Circuit Court of the United States for the Western District of Tennessee.

Brief of Gantt & Etheridge,

For Plaintiff in Error.

STATEMENT OF THE CASE.

This suit was begun on the tenth of March, 1874, on fifty coupon bonds, each of the denomination of $500, dated January 1, 1869, and delivered to the Mississippi River Railroad Company, the payee, on the twenty-first of July, 1869.

For the style of these bonds see R. 10.

They were executed, and delivered as the bonds of the county, in pursuance of a subscription of $200,000, to the capital stock of said railroad company. The subscription was made by the County Court, under the supposed author-

ity of the sixth section of the act of the Tennessee Legislature, as amended by section 1 of the act of November 5th, 1867, and section 28, of the act of February 12th, 1869.

These enactments are, professedly, amendments of the charter of said railroad corporation. They dispense with the popular vote, by suspending so much of the general law, of 1852, as makes such vote indispensable to the validity of such subscriptions. They authorize a tax for the said subscription and bonds, at any *monthly or special* term of the County Court, thereby suspending the general law, which requires all taxation to be imposed at the quarterly sessions of said court.

This suspension of the general law was for the benefit of a single railroad corporation, and applied, only, to five counties in the State. It left the general law, otherwise, in full force. It was not of permanent duration, but transient, spending its whole force upon the single act, which it undertook to authorize.

For these several enactments and the general laws, which they were designed to suspend,

See Appendix to this Brief, pp. 1, 2, 3, 4, 5, 6.

The validity of these acts presents the first question for determination. Are such acts not in conflict with art. 1, sec. 8, and art. 11, sec. 7, of the Constitution of 1834?

For these constitutional provisions see Appendix, p. 7.

In the procurement of said subscription and the issuance of said bonds, there was fraud, moral coercion, intimidation, and bribery, on the part of the Mississippi River Railroad Company. These corrupt practices were not discovered, by the County Court of Tipton county, until February, 1875.

Defendants, in error, got the bonds, in suit, when overdue, from the Paducah & Memphis Railroad Company, which was a corporation formed by the consolidation of the Mississippi River Railway Company and the Paducah & Gulf Company, and which succeeded to the rights of the two companies, out of which, it was formed.

The circuit judge instructed the jury, that plaintiff, in error, was estopped from relying on the defence of fraud, upon a state of facts recited in the instruction, and which appears on the Record, at pages 43, 44.

The facts on which this instruction rests appear on the Record at pages 37, 38, 42, 43.

This ruling presents the second question for consideration.

For the exceptions taken to said ruling, see R., 46, 47.

ASSIGNMENTS OF ERROR.

I.

The Circuit Judge erred in holding said acts of the General Assembly of Tennessee, of February 27th, 1867, November 5th, 1867, and February 12th, 1869, valid.

II.

In ruling that plaintiff in error was estopped from relying upon the fraud, in procuring said bonds, as a defence to this action.

III.

In refusing the fifth, sixth, seventh and eighth instructions asked by the plaintiff in error.

For these instructions, see R., 44, 45.

ARGUMENT.

I.

The acts of the Legislature, under which, the bonds in suit, were issued, are in conflict with art. 11, sec. 7, of the Constitution of 1834, which is as follows:

"The Legislature shall have no power to suspend any general law for the benefit of any particular individual; nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual, or individuals, rights, privileges or immunities, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. Provided always, the Legislature shall have power to grant such charters of incorporation as may be deemed expedient for the public good."

By the general law of 1852, ch. 117, secs. 1 and 2, subscriptions by counties, to the capital stock of railroad companies, was authorized, but made to depend upon the popular vote, such vote being the *essential* thing. With this statute *originated* the policy on this subject. It was wholly unknown, in connection with counties, prior to this time. Grave doubts were entertained, at the time, as to the wisdom of this statute, as well as to its constitutionality. The latter was settled, in the well known case, of Louisville & Nashville Railroad Company v. Davidson County.

1 Sneed, p. 636.

In 1858, the substance of the act of 1852 was re enacted, by the Code of that year, in the following terms:

Sec. 1142. Any county, incorporated town, or city, may subscribe for stock to an amount not exceeding, in the aggregate, one fifteenth of its taxable property, nor more than one million dollars, in railroads, running to, or contiguous thereto, upon the following terms, and conditions:

Sec. 1143. The approbation of the legal voters of the county, town, or city, to the proposed subscription, must be first obtained, by election, held by the sheriff, in the usual way in which popular elections are held.

So far as counties are concerned, this policy has always been adhered to, except in the case in hand. This constitutes the solitary exception to this stable and cherished doctrine. The general law was suspended for the occasion, and, only, in certain particulars, among which, was the popular vote, but otherwise it remained in full force, as is shown upon the face of this extraordinary legislation. The sixth section of the leading act, entitled an act for the benefit of the Winchester and Alabama Railroad Company, and for other purposes, is as follows:

"That the county court of any county through which the Mississippi River Railroad is proposed to run, a majority of the justices in commission concurring, may make a corporate or county subscription to the capital stock of said railroad company of an amount not exceeding two-thirds of the estimated costs of grading the road bed through the county and preparing the same for the iron rails; the said costs to be certified by the sworn statement of the President or Chief Engineer of said company. And *after* such subscription shall have been entered upon the books of the railroad company, either by the county court or by any other member of the court appointed therefor, the court shall proceed, without further reference or delay, to levy an assessment on all the taxable property within the county sufficient to pay said subscription; and the same

shall be payable in three equal annual instalments, commencing with the fiscal year in which said subscription shall be made. And it shall be lawful for the county court making subscriptions, as herein provided, to issue *short* bonds to the railroad company, in anticipation of the collection of the annual levies, if thereby construction of the work may be facilitated. And in all other respects, except as herein specially provided, the capital stock of said railroad company to be subscribed by counties shall be governed by the general internal improvement laws of the State."

The suspension was in favor of a single railway corporation. The legislation purports to be part of its charter, and shows on its face that it was designed to confer a benefit on this particular company, by exempting it from the operation of the general law. Through the same counties, or some of them, traversed by the line of this company, there were other projected railways; but this, alone, was selected as the special object of legislative favor.

How is it possible to reconcile this special legislation with a Constitution which declares that the Legislature shall have no power to suspend any general law for the benefit of any particular individual; nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual, or individuals, rights, privileges, and immunities, other than such as may be, by the same law, extended to any member of the community, who may be able to bring himself within the provisions of such law.

The question of the validity of this legislation is one pertaining solely to the Constitution and local laws of the State.

The highest court of the State, in the case of Wallace v. Tipton County, at the September term, 1875, in two

opinions, one on the hearing, and one on an application to rehear, declared said legislation void. The question was elaborately argued, both on the hearing and rehearing. The Court was composed of six judges. They were unanimously of opinion that the conflict between said laws and the seventh section of the eleventh article of the Constitution, was manifest, upon the mere reading of the same, in juxtaposition.

It is submitted these opinions are decisive. They will be found in the Appendix hereto, pp. 7 to 24.

On this question, the Circuit Judge, (Emmons,) who tried this cause below, deemed it proper to indicate that his dissent, from the unanimous opinion of the Supreme Court of the State, was formal, rather than from a feeling of confidence that he was right.

After stating the circumstances which prevented him from giving the question that thorough examination which he desired to bestow on it, he proceeds as follows: "I the more regret this because, in the accidents of their history, these causes will go to the court of last resort with a judgment here in disregard of the unanimous opinion of the Supreme Court of the State, upon the precise point involved. It does so in violation of the rule we have established for ourselves, never to render a judgment in conflict with such an opinion without giving a full written statement of the reasons of our disagreement. Every dictate of propriety demands such a course. Especially is this so in reference to all those questions involving, as this one does, the construction of the local constitutions and statutes, a class of questions, in reference to which, as an almost universal rule, the judgment of the State tribunal would be adopted here. We are entirely confident, however, that the circumstances of these cases will justify our formal overruling the motions for a new trial, that the questions may be reviewed by the Supreme Court of the United

States." Further on he says: "At the trial we followed pretty strong impressions in favor of the plaintiff. But for our own thorough respect for the State judgment deciding the contrary, we should not have entertained serious doubts of the constitutionality of the law authorizing Tipton county to issue these bonds. The larger knowledge of local laws, and their practical construction by judges who have grown up under them, entitles their decisions to the very highest consideration, and demands what we had hoped to give in this instance, a most painstaking and thorough examination, before they are disregarded. Impaired health rendering this impossible, it will not be deemed wanting in respect to the State tribunal that we overrule the motion for a new trial, adhering to the rulings we have made, not because we have re-examined them, and affirm them, with confidence, but because it will subserve the interest of both plaintiff and defendant to suffer the Records, so painstakingly prepared, to go to the Supreme Court as they are."

See R., 53, 54.

In this connection, it is proper to state, that at the date of the enactment of the laws in question, the Constitution of no other State contained a provision, which forbade special legislation, and inhibited the suspension of the general law, for the benefit of individuals, in the sweeping and emphatic terms, of art 11, sec. 8, of the Constitution of Tennessee. It was peculiar to this State until a comparatively recent period. In the Constitution of Michigan, and other Constitutions, with which Judge Emmons was especially familiar, no such provision is to be found. It is therefore not strange that he should not be prepared to give full effect to this peculiarity, in our local law.

Judge Emmons' successor, Judge Baxter, who is familiar with the Constitution and laws of Tennessee, from long experience, and practice, without hesitancy, adjudges the said legislation to be in palpable conflict with the constitu-

tion, and void. Hon. E. S. Hammond, District Judge, and for years engaged in the practice in Tennessee, takes the same view.

We lay stress on the fact that Judges Baxter and Hammond, of the Federal bench, take the same view of this legislation, that the Supreme Court of the State does. Opportunity, and long study, of our local law, qualify them, in a high degree, to pass upon such a question. They enjoy advantages that Judge Emmons did not. Their opinion is positive. His, on the contrary, is so modified, by his admitted doubts, and difficulties, as to be little more than a formal ruling, in order to transfer the cause, to this tribunal, for ultimate decision. Practically, therefore, the case comes here, not only, with the State Court opinion, in favor of plaintiff in error, but also with that of the Judges of the Circuit and District Courts of the United States, so far as they have given any *decided* opinion on the question.

Again, the legislation not only dispensed with the popular vote in making said subscription and the issuance of said bonds, but by the act of November 5th, 1867, entitled "An Act for the benefit of the Mississippi River Railroad Company," it authorizes the subscription to be made at any *monthly* or *special term* of the county court. This was contrary to the general law, which requires the county courts, at the first term in every year, to impose and provide for the collection of the tax for county purposes, and fix the rate thereof; but if they omit such duty at the first term, it shall be performed at the April, or any subsequent *quarterly* session.

Code of Tenn., sec. 4193. Appendix, p. 6.

By the general law, the county court was without power to appoint a special term.

7 Heisk., 376

This legislation gave that power.

These interferences with the due course of the general law were designed to exempt a single corporate person from its operations, as is patent upon the face of the legislation, by which they were effected. That corporation took advantage of the exception thus made in its behalf, and actually procured the subscription and tax, not at the *first* term, or *April*, or *other* quarterly session, but at the *second monthly term* of the year.

Article 11, section 7, was designed to prevent just such special legislative grants or favors, as these to individuals, by which they were relieved from the operation of the general law, and placed above it.

The act of 1852 is entitled, "an act to authorize, and regulate county subscriptions for railway stock." It was the *rule* prescribed for *counties*. It authorized unusual, and extraordinary taxation, never before known in the history of the State. The subject of taxation for the ordinary purposes of government had been long regulated by general laws, which were passed the year after the adoption of the Constitution of 1834. With very little modification, these laws are still in force.

But, in regard to cities, and incorporated towns, the act of 1852 was not a *rule* to be followed, but they were *permitted* to avail themselves of its provisions if they desired to do so.

Sec. 13 of the act is as follows:

"Incorporated towns and cities within this State, may avail themselves of the foregoing provisions of this act, for the purpose of aiding in the construction of any of said railways."

The popular vote, became the rule for incorporated towns, and cities, as well as for counties, upon the passage of the Code in 1858.

Time demonstrated the wisdom of the rule prescribed for this exceptional kind of taxation. It grew in public favor year by year.

It was made part of the Constitution adopted in 1870. Art. 2, sec 29, of that instrument, provides that no county, city, or town, shall give, or loan its credit, or become a stockholder, with others, in any company, association, or corporation, except upon an election to be first held, and the assent of three-fourths of the votes cast at such election.

Twenty-eight years have elapsed since the passage of the act to "authorize and regulate county subscriptions to the capital stock of railways," and, in all that period, no decision has been rendered by the Supreme Court of Tennessee, holding a stock subscription, or bonds issued, in aid of a railway, valid, without the sanction of the popular vote. The subject has often been before the court, and, it has, invariably, held that the *popular vote* was the *essential thing* to give *validity* to such subscription, or bonds.

The question is not what power the Legislature possessed under the Constitution of 1834, to pass laws applicable to the local subdivisions and arms of government, in the ***absence*** of general laws, but whether it possessed power to suspend the operation of a general law, applicable to all these branches of government, simply as a favor to some particular person, while it remained in full force, as to all other persons?

This question is not met by reference to local laws which have been held valid, nor by citing statutes that were enacted before the adoption of the Constitution of 1834. It can only be answered by a decision holding a special law valid, passed since 1834, which suspended a general law, in the interest of some particular individual.

CASES RELIED ON FOR DEFENDANT IN ERROR.

1. Great stress is laid by the counsel opposed on the case of the Louisville & Nashville Railroad Company v. Davidson County and others, 1 Sneed, 638.

It is insisted that this case conflicts with the decision which declares the legislation in question invalid, and that it settles that section 7, of article 11, of the Constitution of 1834, does not apply to such legislation.

The shortest way to demonstrate that this is a misconception of the case is to state the questions involved, and what was decided. 1. It was adjudged that the construction of a railroad through a county is a "*county purpose*" within the meaning of sec. 29, art. 2, of the Constitution. 2. That the reference to the vote of the people of subscription or no subscription of stock in a railroad company, as prescribed in the act of 1852, ch. 117 (the general law), does not invalidate the act by bringing it in conflict with the Constitution. 3. That the duties devolved on the county court by said act were merely ministerial, and that no power to levy a tax, create a debt, or appropriate money, was conferred on said court, but all this is referred to the people, whose edict the court is bound to carry out. 4. That when by an act of the Legislature a new power is vested in the county court, or a new power conferred upon it, and no particular number of justices is specified, any number which may constitute a legal court can perform it. 5. That when a question is put to the people of a county, and made to depend on the vote of a majority of the voters of said county, that the test of the number entitled to vote is the result thereof as determined by the ballot-box. 6. That the failure of the sheriff to hold an election at one or more voting places does not invalidate an election, unless it appears that it does or might have affected the result. 7. That only the points in judgment, arising in

the particular case, are authority, and that the reasoning, illustrations, or references, in an opinion, are not authority.

The foregoing are the points which this case determines. Their enumeration demonstrates that it is not authority for the position of opposing counsel.

It is true, that the court had before it two special acts. One applied only to a few counties. Under that, Davidson county voted its subscription. But it did not suspend the general law, but was in substantial harmony with it. They were passed at the same session, and each contained the popular vote, which was the leading feature of the general law. There was some difference in the phraseology of the two acts as to the popular vote, but the court expressly adjudged that there was no difference in the substance. It is true that article 11, section 7, was relied on by counsel (Messrs. Brien & Washburn); but White county, their client, voted under the general law, and they relied on that provision to show that the *general law* (not the special), was unconstitutional. So much of their argument as relates to this point is as follows:

If the tax is imposed it must be the result of one of the following propositions: 1. It must be a tax imposed by the Legislature. 2. By the county. 3. The popular vote, having the force and effect of a law. If it is the act of the Legislature, then it is in conflict with the 7th section, 11th article of the Constitution, being for the benefit of stockholders, and inconsistent with the general laws of the land.

Again: "The county court is a corporation sub modo, but the county is not; the inhabitants are not corporators, but citizens, subject to be governed by the county, under the laws of the land. They have never consented, as corporators have, to be governed differently from citizens of all the counties, by *reason of a vote of a majority of the county.*"

The point thus made was not seriously pressed. In that part of the opinion devoted to a consideration of *objections to the general law*, the court, speaking by Judge Caruthers, thus disposes of it:

"The clause against private and partial laws is also cited. This is, if possible, still more remote and inapplicable. To prove this, it will be only necessary to read it in connection with sec. 29, art. 2. But these objections are but little relied on, and need not be further noticed." See page 678.

By a special act, passed in 1853, a reference was authorized to the voters of Sumner county, to ascertain, whether they preferred to pay the tax which they had voted, under the general law, in money, or bonds having not less than ten, nor more than twenty years to run, with interest at six per cent. per annum. The court held that this act only went to the mode of paying the debt created under the general act. That the people, on the one hand, and the railway, on the other, could certainly have changed the mode of payment, and that this act only furnished the means of getting at the will of the people, on the question of the mode of payment. p. 685.

Such is the case of the Louisville & Nashville Railroad Company v. Davidson County and others.

1 Sneed, 638.

It neither involved, nor adjudged any point in conflict with the opinion of the Supreme Court, which holds the legislation, under *consideration*, *invalid*.

2. Hazen v. the Union Bank, 1 Sneed, 716.

This case is not in point. It arose on a charter passed under the Constitution of 1796. One of the franchises of the bank consisted in the right to loan money at 7 per

cent. per annum. There was a general law fixing the rate of interest at 6 per cent. per annum.

There was no such provision in the Constitution of 1796 as sec. 7, of art. 11, of the Constitution of 1834. If this case had arisen under the Constitution of 1834, a different conclusion would have been reached. It is clearly not authority on the subject under consideration.

3. Burton v. School Commissioners, Meigs R., 505.

This case, like the preceding one, arose under the Constitution of 1834. Mr. Meigs, the able reporter, suggests by a query, that if the act had been passed after the Constitution of 1834 was adopted, that it would have been void by reason of a conflict with sec. 7, of art. 11. This query is retained by Ch. Cooper in his edition of Meigs' Reports.

4. Ross v. Anderson County, MS.

In this case, the popular vote was taken in conformity with the general law. Judge Sneed lays stress on that fact in the opinion. He declares that "*to be the vital thing.*" It will appear, on a careful examination of the opinion, that the special acts referred to, had no effect but to cure *mere irregularities.* It is not authority for holding that the State Court erred in its decision as to the validity of the laws, under which the Tipton county bonds are based.

5. Mayor and Aldermen v. Nichol, 9 Hum., 252.

This case originated before the passage of the general law of 1852. It was decided in 1848. It involved the question, whether the building of a railway, which had one of its termini in or at the city of Nashville, was a corporate use or not, and whether the Legislature possessed power, under the twenty-ninth section of art. 2, of the Constitution of 1834, to authorize the city of Nashville to subscribe

to the capital stock of such railway, and issue its bonds therefor, and levy a tax for the payment of the bonds and interest. It was determined that such a railway was a corporate use, and that the Legislature might delegate authority to the city to subscribe to its capital stock, and provide for the payment of the same. This decision being prior to the act of 1852, could not possibly involve its construction. Nor could the legislation, on which it was based, suspend a law not then in existence. Nor was the legislation inconsistent with any general law. Moreover, there is a wide difference between counties, and cities, and incorporated towns. It does not follow, by any means, that because a law, applicable to a municipal corporation, is held to be valid, that the like law would be held valid, if applied to a county.

But further comment on this case is unnecessary, as it is clear that it neither involved nor adjudicated the question raised by the case in hand.

5. McCallie v. The Mayor and Aldermen of Chattanooga, 3 Head, 316.

Like the preceding case, this involves a subscription to a railway company, by an incorporated town, by virtue of an amendment of its charter, made in 1851, and prior to the passage of the general law of 1852. It neither involved nor determined the question under examination.

It decides: That the extension or diminution of the limits of a municipal corporation is an exercise of governmental power. That it is not in the nature of a contract, and may be exercised at the pleasure of the Legislature. That the Legislature may surrender the power of taxation in respect to particular lands, but such surrender, if without consideration, is not contractual, and the power may be renewed at pleasure. That the judgment of the local government of a municipal corporation may, in general,

be taken as *prima facie* evidence whether a given object is a "corporate purpose" or not.

After disposing of the principal questions in the case, Judge McKinney, in concluding the opinion, uses this language: "The objection that the proposition to subscribe for the stock was not submitted to a vote of the inhabitants of the town is not well founded. The Legislature was authorized by the Constitution to confer the power directly and exclusively upon the mayor and aldermen."

It must be remembered, that this was said in reference to an amendment of the charter of Chattanooga, made in 1851, and at a time when there was no law authorizing a submission of the question to the popular vote. It was but a brief statement of what had been held in the elaborate opinion, in the case of the Mayor and Aldermen v. Nichol, 9 Hum., 252.

This case and that of Ross v. Anderson County were pressed upon the attention of the Supreme Court of the State, upon the application to rehear, in the case of Wallace and others v. Tipton County.

Judge Deaderick, in the opinion refusing the petition, makes the following observations touching them: "In the first-named case the question is not discussed at all—a simple declaration of power conferred by the Constitution, without any reference to or discussion of the act of 1851, 2, as an exercise of that power. In the other case it is held, where the power exists and has been exercised, a mere irregularity in its exercise may be cured by legislative enactment, or may be insufficient to render the acts void."

DISTINCTION BETWEEN INCORPORATED TOWNS AND CITIES, AND COUNTIES. THE RULE OF DECISION FOR ONE NOT NECESSARILY THE RULE FOR THE OTHER.

The argument of opposing counsel, based upon the cases of Mayor and Aldermen v. Nichol, 9 Hum., 252, and McCallie v. Chattanooga, 3 Head, 316, proceeds upon the mistaken assumption of a similarity, so close, between incorporated towns and cities, and counties, as to make a decision which is authority in reference to one, *necessarily* authority, as to the other. They are strikingly dissimilar.

The powers and liabilities of (chartered) municipal corporations are much more extensive than those of counties. Considered with reference to the limited number of their powers, counties rank low, in the scale of corporate existence.

Dillon on Corporations, sec. 10, p. 33; sec. 761. Cooley, p. 240.

"Municipal (chartered) corporations are called into existence, either at the direct solicitation, or by the free consent of the persons composing them, for the promotion of their own local and private advantage, and convenience. Counties at most are but local organizations, which, for the purposes of civil administration, are invested with a few functions characteristic of corporate existence. * * A municipal corporation proper is created for the convenience of the locality and its people, and a county organization is created almost exclusively with a view to the policy of the State at large, for the purposes of political organization, and civil administration. * * * With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are, in fact, but a branch of the general administration of that policy."

Hamilton County v. Meghels, 7 Ohio St. R., p. 109. Dillon, p. 33.

Counties are only *quasi* corporations—civil divisions, for some purposes, and corporations for others.

1 Sneed, p. 687. See also 11 Minn., 31.
36 Mo., 294. Ib., 255.

Dillon says they owe their existence to the general statutes of the State.

Dillon, sec. 10, p. 33.

Counties do not hold under charter; have no franchises; are not subject to forfeiture, or dissolution, or visitation, or legislative repeal; can make no bylaws.

In Tennessee counties cannot appropriate money to repair a common highway.

7 Cold., 52–54.

The laws defining the powers and liabilities of each county in Tennessee, are *general and public laws*, affecting all the counties of the State alike.

Code of Tenn., sec. 76. Con. of 1834, art. 10.

On the other hand, until May, 1870, from the foundation of the State, municipal (chartered) corporations were created by partial or local law, each deriving all its powers from its own charter, and each differing from every other.

Cities and towns may pass ordinances having all the force and effect of private laws.

Code, sec. 1359.

Counties have no such power. Charters of cities and towns may be repealed. Counties are constitutional organizations, part of the fabric of the State—with officers provided for, and duties defined by the Constitution.

See Con. of 1834, art. 10. sec. 4; art. 6, sec. 15; art. 7, secs. 1, 2, 3, 4, 5.

Counties have existed as civil divisions of the State, and been regulated by general law, from a very early day, going far up into the Colonial time.

See acts of 1741, Caruthers & Nicholson Statutes, p. 197.

Act of 1817, Id. Act of 1827, Id., p. 198.

Chartered corporations prior to 1870 were so purely the creatures of partial law, that their creation had to be authorized by a proviso to art 11, sec. 7, of the Constitution of 1834, the body of which cut off all manner of partial, and class legislation.

Memphis Water Co. v. Memphis, 5 Heisk., p. 530.

Prior to May 1870, all legislation in regard to towns and cities was partial. Just the reverse was true as to counties.

THE ACTS OF 1867 NOT A PART OF THE FRANCHISES OF THE MISSISSIPPI RIVER RAILWAY COMPANY. THE GENERAL LAW NOT TO BE OVERTHROWN UNDER COLOR OF CORPORATE FRANCHISES.

The acts of 1867 do not profess to be a part of the franchises of the Mississippi River Railway Company. They were not a part of the charter originally. They are not, properly speaking, amendments. Everything that is called charter, or franchise, is not such. A franchise is a part of the rights granted, to continue whilst the corporation exists, and to be enjoyed and exercised throughout the whole period of the corporate existence.

These acts on their face profess to be for the benefit of the corporate person, and not a part of it. They expressly suspend the general law for its benefit.

A corporation is an aggregation of franchises. But every statute in aid of a corporation is not necessarily a

1741—CHAPTER 18.

Section 2. The Justices of each county shall and may employ persons to keep and maintain the courthouse and prison already built, and such as may be built, or to rebuild such as have fallen to decay or ruin, and the same to keep in repair.

1829—CHAPTER 99.

Section 1. Any county court, a majority of the acting justices being present,) shall have full power to lay any tax, from time to time, that they may think proper, to build any courthouse or jail, or to repair the same.

part of the franchise. It is a person. What aids it, need not be a part of it, any more than what aids a natural person need be a part of such natural person.

The right to violate the general law cannot be foisted through the Legislature, under the guise of corporate franchises.

Mayor of Alexandria v. Dearborn, 2 Sneed, 104.
Overton Hotel Co. v. McKinney, 12 Heisk., 104.
Budd v. The State, 3 Hum., 483.

The case cited from 2 Sneed involved the validity of what professed to be an amendment of the charter of the town of Alexandria, in suspension of the general law. It was held void.

Budd v. The State, 3 Hum., involved the validity of the twenty-second section of the charter of the Union Bank, which declared certain acts mentioned in the section a felony. It was held that the section could not be sustained as a *part* of the *charter*. Nor was it the "law of the land."

The Overton Hotel Company, (12 Heisk., 104,) procured the passage of an act to permit it to make and sell its bonds, bearing interest at the rate of ten per cent. per annum. This was held to be in conflict, as well with sec. 6 as sec. 7, of the eleventh article of the Constitution of 1834.

Judge Freeman, speaking for the court, in this case, says: "The Legislature, by virtue of the proviso in the seventh clause, (section,) may grant such acts of incorporation as may be deemed expedient for the public good, but cannot grant to such corporations powers or rights expressly forbidden by any other clause of the Constitution. To hold to the contrary of this, would be to hold that the proviso to the section not only intended to exempt the Legislature from the limitations imposed upon it by the first part of the section, but also to enable the Legislature to override

and render nugatory the sixth section of art. 11, in case of every charter of incorporation by that body."

The proviso to sec. 7, art. 11, of the Constitution was intended to authorize the Legislature to create corporations, but not to grant to the corporate creature power to contravene the Constitution. The Legislature can no more do this for a corporation than for a natural person. Speaking to this point, in the Overton Hotel case, Freeman, Judge, says: "We think the true construction of sec. 7, art. 11, is that the Legislature has the power to grant such acts of incorporation as they may deem for the public good; that is, that the Legislature is to be the judge of the propriety of granting the charter of incorporation, and whether the public good demands it, but that as to the powers which it may grant to such bodies in the act of incorporation, they are to be restricted by *every other provision* of the Constitution, and can no more grant a power to a corporation that shall contravene *any other provision* of the *Constitution* than they can grant such powers to an individual. In other words, the right to grant such charters of incorporation as they may deem for the public good does not authorize the Legislature to grant such powers and privileges as they may deem best where such powers are in violation of any other clause of the Constitution."

It is not the enactment of a law having a local application merely that makes it void; it is not conferring upon corporations by special or local law some, or even all, of the powers and rights of natural persons, that makes such legislation obnoxious to the Constitution; but it is the suspension of the general law, to do something for a corporation that could not be done, for a natural person, as was attempted by the legislation, under consideration in this case.

SPIRIT AND TENDENCY OF TENNESSEE DECISIONS ON PARTIAL LAWS AND CLASS LEGISLATION.

The spirit of the State Court decisions, so far from antagonizing, on examination, will be found to be in harmony with the opinion in Wallace v. Tipton County. They show, invariably, and from the earliest day of our judicial history, as a State, the greatest repugnance to governing by partial laws. This appears by the decisions under the Constitution of 1796, our first Constitution. The Constitution of 1834 showed increased hostility to such legislation. That of 1870 totally forbids such legislation, even for the purpose of creating, or adding to, or diminishing the powers of corporations. All legislation is now required to be by general laws.

An early case held a special act authorizing twelve counties to levy a tax, applicable to those counties, alone, void, on two grounds, viz: 1. Because it was a partial law, and not the law of the land. 2. Because the power of taxation was lodged in the Legislature, and it had no power to delegate taxation to any other agent of government.

Marr v. Enloe, 1 Yer., 452.

"Law of the land," construed, by early cases, to mean a general public law, equally binding upon all.

2 Yer., 554, 555; Ib., 599.

An act of the Legislature authorizing a judgment rendered in favor of a person since deceased, to be revived, in the name of third party, not the law of the land.

4 Yer., 202.

An act reviving a suit, in which the plaintiff had died, in the name of a third person, in conflict with the Constitution, and void.

5 Yer., 520.

merchants, factors or brokers. Held valid, because every citizen of the State could bring himself within the provisions of the act, by becoming such merchant, factor, or broker.

12 Heisk., 633.

This case is cited, as furnishing an example, of a law, free from the constitutional objection of being partial, or in favor of an individual, or class of individuals, in the view, that the Supreme Court takes of the question.

These citations are sufficient to show the spirit, and uniform tendency, of the decisions of the Supreme Court of Tennessee, on the subject of partial laws, and class legislation. The case of Wallace v. Tipton County is no novel doctrine. It is in accord with the whole course of judicial opinion, on the subject of such legislation.

To show the view entertained by the Tennessee Supreme Court, as to county subscriptions to the capital stock of railway companies, prior to the decision of Wallace v. Tipton County, an extract is made from the opinion of Freeman, J., in the case of Winston v. Tennessee & Pacific R. R. Co., as follows:

"It is evident from these sections (Code, 1143–1148,) that the purpose of the Legislature was, not to entrust this matter to the action of the county court, or justices of the county, the body ordinarily controlling the collection and appropriation of the revenues of the county, but that the people of the county, or a majority, as provided by law, were required to give their approbation to such subscription, and this approval must be first obtained, before any subscription is authorized, is the *precise*, and definite requirement of the law. Without this a subscription is a contract wholly unauthorized, and of no validity whatever."

1 Baxter, 70.

It is not surprising, in view of this well-known policy, presented by a well-considered public law, that the Supreme Court of Tennessee should, without hesitancy, hold an effort of the Legislature to exempt one railway corporation from its operation, a manifest infraction of article 11, section 7, of the Constitution.

PECULIARITIES IN THE CONSTITUTIONS OF TENNESSEE, AND THE DECISIONS CONSTRUING THEM, WHICH DISTINGUISH THE LOCAL LAW OF TENNESSEE FROM THAT OF MOST OTHER STATES OF THE UNION.

I.

Under a constitutional provision of the Constitution of 1796, not unlike that of most other States, the Supreme Court of the State held, in 1832, that the Legislature had no power to authorize counties to levy and collect taxes, and that laws passed with that view were void.

Marr v. Enloe, 1 Yer., 452.

A different view prevailed in most other States; in all, so far as I have observed.

II.

This decision caused the convention that framed the Constitution of 1834 to insert a provision expressly authorizing the Legislature to delegate the power of taxation to counties and towns.

III.

It was held, under this authority, that the Legislature could not delegate taxation to the civil districts of the counties.

6 Cold., 127; 1 Lea, 546.

IV.

Sec. 7 of art. 11 of the Constitution was contained in no other Constitution, until within a comparatively recent period.

But for the provision to that section, according to the opinion of Nicholson, Ch. J., in Memphis v. Memphis Water Company, 5 Heisk., page 495, the Legislature would have been inhibited from granting charters of incorporation.

V.

Whilst, in nearly all the States, local assessments, by the front foot, or on some other standard, than that of value, were lawful, they were prohibited by the Constitution of Tennessee.

9 Heisk., p. 349.

Attention is called to these exceptional features, in the local law of Tennessee, as strongly persuasive for following the opinion of the State Court, and those Judges on the Federal Bench whose long study and experience, have made them familiar with Tennessee local law.

MEANING OF ART. 2, SEC. 29, OF THE CONSTITUTION, OF 1834, ACCORDING TO ITS TERMS, AND, THE OBJECT, IN MAKING IT PART OF THAT INSTRUMENT.

Under the Constitution of 1796, the Legislature was adjudged, without power, to authorize counties and towns to levy taxes for county and corporate uses.

6 Cold., 127-132. 1 Yerg., 452.

The obvious purpose of sec. 29, of art. 2, was to supply such power. The words employed fitly and clearly express the object.

But it was certainly not the purpose to authorize the exercise of this power, in a way, to conflict with other provisions of the Constitution. On the contrary, it is to be done, "in such manner, as may be provided by law." That is, an enactment not repugnant to any other pro-

Section 29, Article 2, Constitution 1834, is as follows:
The General Assembly shall have power to authorize the several counties, and incorporated towns, in this State, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation.

visions of the Constitution. It must be by some act, which is the law of the land, under art. 1, sec. 8, and which does not infringe art. 11, sec. 7.

Any effort to delegate taxation, by a law in violation of either of these sections, would be nugatory; not for want of power over the subject, but for the *wrong method* of its exercise.

For example: it was a wrong method of exerting the power, when the Legislature authorized the City of Memphis to impose taxation by the front foot, instead of by a standard of value.

9 Heisk., 349.

It was an illegal exercise of the power when the Legislature undertook to authorize the civil districts of the counties to levy taxes.

6 Cold., 127.

It was an unconstitutional method of exercising this power, when the Legislature denominated the civil districts of the counties, incorporated towns, and, as such, undertook to authorize them, to levy taxes.

1 Lea, 546.

It was an unauthorized exercise of the power, when the Legislature undertook to confer it, on a separate corporation, to consist of the Mayor and Aldermen of a city, who were made, ex officio, the President and Directors of the Cleveland Public Schools.

8 Heisk., 857.

It was a wrong method when the Legislature undertook to take the levy of taxes from the justices of the quarterly courts, in certain counties, and confer it on officers styled "county commissioners," of such counties.

3 Heisk., 683.

The legislation, under consideration, is manifestly a wrong, and illegal exercise of this power.

LEGISLATIVE PRACTICE AND PRECEDENT.

The industry and research of adversary counsel have cited many statutes for the purpose of showing a legislative habit of exercising the right to pass similar laws to those involved. Many of the statutes so cited have no pertinence whatever. Many are dead letters—mere legislative abortions. A few, one or more, prior to the general act of 1852, and possibly a few since, undertook to authorize county subscriptions, without a popular vote. They fell stillborn. Nothing was ever done under them. They did not need to be put out of existence. They never, in fact, had any potential existence.

Others (in regard to bridges and dirt and turnpike roads) did not suspend any general law, but were in harmony with the general law, or covered ground, as to which there was no provision by general law. Very few of these were ever acted on. Not one was ever challenged, and tested by judicial decision.

Not one bore fruit by a county subscription, without the popular vote, except the acts in question. The whole practice, from the foundation of railway aid by counties, has been against the policy of the laws in question.

It is submitted that there is nothing, in this mode of attacking the opinions of the Supreme Court of the State, concurred in, by the Federal Judges, who reside within the State, and are familiar with its laws and institutions, which should make this court hesitate to follow the unanimous judgment of the State court.

ESTOPPEL—FRAUD.

The facts of this case do not create an estoppel. There is error in the charge on this head.

1. To establish an estoppel by the action of the county court, nothing can be looked to but what the Record discloses. The county court, as such, can only act by its Record. The estoppel, if it exists, springs out of the action of the county court on the proposition of the Mississippi River Railway, to extend the time for the payment of the bonds. This action must be determined by the Record alone.

3 Head, 583; 2 Hum. 390; 3 Dev., 423; 4 Ire., 140.

The Record contains not one word in regard to the *consolidation* of the roads. Proof aliunde *is inadmissable*. If this be a sound view, the error of the charge is obvious.

See R., 37.

2. Nothing was before the court, except the proposition of the Mississippi River Railway. That was in writing. Mr. Ex. Norton was agent to present that proposition. He bore none other. If he went outside of it, it was in excess of authority. The Record was confined to the single proposition. It sent no message to the Paducah & Gulf Railway Co. The County Court was not called on to consider the question of consolidation. If it had been, its Record would have shown it. It could be shown, in no other way.

Mr. Norton's talk with some of the justices, and his report of that talk, to his Paducah and Gulf Company, is wholly without effect on the question. Neither he, nor his Company, had the slightest right to rely, on anything not contained in the Record. It is preposterous to assume that a county is to be estopped, by the loose *unrecorded say-*

ings, oral dicta, of its justices. As well say what takes place between Bench and Bar, on the trial of a cause, and of which the Record contains no trace, is to be a part of the judgment of the court.

3. The justices of the county were not the agents of the county to make such representations. They were wholly unauthorized.

State v. McLean, 8 Heisk., p. 233.
2 Hill, N. Y., 159, 175.
9 Heisk., 100.

4. But if such agency ever existed, the Constitution of May, 1870, revoked it, and remitted the whole subject to the principals, the people. The court, at October term, 1871, when these representations were made, could not have bound the people, by the most solemn engagement, in writing, on their behalf, *agreeing in express terms*, to do all that Mr. Norton said, some of the justices promised.

See Constitution of 1870, art. 2, sec. 29.

Will it do to say that what was impossible in the most direct, formal and solemn way, can be done in the form of estoppel, on loose declarations, or on a Record, which had no reference to the party which claims the benefit of the estoppel? Surely not.

6. The facts create no estoppel, because the action was not intended to mislead.

Because made *in ignorance* of material facts, constituting a gross fraud, which were known to, and concocted by, the Mississippi River Railway, the principal for whom Mr. Norton was at the time acting.

Because not made to the Paducah & Gulf Road.

Because, there was no gain to the county, by the action from which it is alleged, the estoppel springs.

See 2 Parsons on Con., pp. 793 to 801, and Notes.

7. On the question of estoppel, more indulgence is extended to communities, and municipal corporations, than to individuals.

27 Penn. St. R., p. 404.

1 Leading Cases in Eq., side p. 141, 142.

Not an estoppel, because one of the railway companies, which was a party to the fraud, was part of the consolidated company, and, of course, knew its own frauds, and carried that knowledge into the consolidated organization.

Because, Jno. P. Douglass, a director in the consolidated company, and who aided in the consolidation, knew of the frauds, and knowledge to him, was knowledge to the company, for which he was a director.

4 Hum., 394; 9 Heisk., 479.

The great frauds committed in procuring these bonds became possible, only, by setting aside the long and well-known general laws, and methods of safety, by which the State was governed. Speaking to this view of the subject, in the opinion to rehear, in Wallace v. Tipton County, Judge Deaderick thus forcibly puts the wisdom of general laws, and the danger of partial laws and class legislation:

"In the case of McKinney & Co. v. Memphis Overton Hotel Co., opinion by Judge Freeman, at the April term, 1873, of this court, the question under discussion arose upon a charter of said corporation (company), authorizing it to issue bonds bearing more than six per cent., the legal rate of interest at the time the charter was granted, the court say the very fact that the act of the Legislature had to be passed for this purpose, settles, we think, the question conclusively, that it is a law passed in derogation of

the general law of the land to enable something to be done that could not legally be done, so as to effectuate the end desired."

See also 2 Head., 276.

"This case is a very strong illustration of the soundness of the argument presented in the foregoing extract. There was a general law allowing stock to be subscribed by counties to railroad companies, but legislation was needed to relieve this company and county from the operation of that general law, and accordingly it was procured; and the county court having been organized with a view to subserving the interests of the railroad company, the scheme of subscription, taxation and issuance of the bonds of the county was consummated by corrupt means which we refrained from commenting on, in the opinion delivered, only because the evidence disclosing the facts could not be looked to as against the company. We allude to it now, by way of illustrating the wisdom of the provision inhibiting the passage of partial laws, which are often attempted to be passed in the interest of oppression and injustice.

"The popular approval by their votes before lending credit to corporations by counties, towns and cities has been deemed so necessary to the protection of the people against onerous taxation, that the Constitution of 1870 has forbidden it to be done without assent of three-fourths of the voters in the election upon the question, art. 2, sec. 29."

Yan Fl

for Williams,

APPENDIX.

THE SPECIAL LEGISLATION FOR THE BENEFIT OF THE MISSISSIPPI RAILROAD COMPANY.

1. Act of February 24, 1867, entitled an act for the benefit of the Winchester and Alabama Railroad Company and for other purposes.

* * * * * * * *

Section 6. *Be it further enacted*, That the County Court of any county through which the line of the Mississippi River Railroad is proposed to run, a majority of the justices "in commission" at the time concurring, may make a corporate or county subscription to the capital stock of said railroad company of an amount not exceeding two-thirds of the estimated cost of grading the road-bed through the county, and preparing the same for the iron rails; the said cost to be verified by the President or Chief Engineer of said company. And after such subscription shall have been entered upon the books of the railroad company either by the Chairman of the County Court, or by any other member of the Court appointed therefor, the Court shall proceed, without further reference or delay, to levy an assessment upon all the taxable property within the county, sufficient to pay said subscription; and the same shall be payable in three equal annual instalments, commencing with the fiscal year in which said subscription shall be made. And it shall be lawful for the County Court making subscriptions as herein provided, to issue short bonds to the railroad company, in anticipation of the collection of the annual levies, if thereby construction of the work may be facilitated; and in all other respects, except as herein specially provided, the capital stock of

said railroad company to be subscribed by counties, shall be governed by the general internal improvement laws of the State.

Sec. 8. *Be it further enacted*, That the forty second section of the act, passed January 29, 1858, chartering the Mississippi River Railroad Company, be so amended as that the Board of Directors may call for the payment of the entire subscription of stock within two years from the date of the subscription, if they so agree with the subscribers: *Provided*, however, that they shall not call for exceeding twenty-five per cent. within any six months.

Sec. 9. *Be it further enacted*, That this act shall take effect from and after its passage.

Passed February 25, 1867.

2. *Act of November 5th, 1868—An Act for the benefit of the Mississippi River Railroad Co.*

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the sixth section of "An Act for the benefit of the Winchester and Alabama Railroad company, and for other purposes," be and is hereby amended as follows, to-wit: That the subscription authorized in said sixth section to be made to the capital stock of the Mississippi River Railroad company, by the counties along the line of said railroad, may be made at any monthly term of the County Courts of said counties, or at any special term of said courts: *Provided*, That a majority of all the justices "in commission" in the counties respectively shall be present when any such subscription is made; *And provided further*, That a majority of those present shall concur therein.

Sec. 3. *Be it further enacted*, That this act shall take effect from and after its passage.

Passed November 5th, 1867.

3. Act of February 12th, 1869, entitled An Act to incorporate the Raleigh Springs Hotel.

* * * * * * *

Sec. 28. *Be it further enacted*, That the stock authorized to be subscribed, in the Mississippi River Railroad Company, by the county courts, or county commissioners, along the line of said railroad, may be paid, in not exceeding six installments, instead of three, as now provided by law.

Sec. 29. *Be it further enacted*, That the counties shall own, and have issued to them, the full amount of stock, in the Mississippi River Railroad Company, which the county courts, or county commissioners are now by law authorized to subscribe, whether said subscriptions be paid, in cash, or county bonds.

Sec. 30. *Be it further enacted*, That all stock subscribed by counties, under the foregoing provisions, and all stock subscribed, or paid for, in money or service by individuals, subsequently to May 15th, 1865, be, and the same is hereby declared, and constituted to be a preferred stock of said Mississippi River Railroad Company, and all other stocks, if any, shall be called the common stock of said company, and the preferred stock shall be entitled to preferred dividends equal to ten (10) per cent. per annum, from the net earnings of said road, and after paying construction account, and then, if there be any excess of earnings undistributed, it may be divided between the preferred and common stock, share, and share alike.

Sec. 31. *Be it further enacted*, That all acts and parts of acts inconsistent with the provisions of this law, be, and the same are hereby repealed.

Passed February 12th, 1869.

GENERAL LAWS SUSPENDED BY THIS SPECIAL LEGISLATION.

1. Act of January 22, 1852, entitled An act to regulate county subscriptions for railroad stock.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall be lawful for the respective county courts of the counties through which a railway or railways has been or shall be located, or which may be contiguous thereto, to subscribe stock in such railroad, or any of such railroad companies, through its chairman, as hereinafter provided for.

Sec. 2. *Be it enacted*, That before any county court shall be permitted to subscribe stock in the name of the county, it is hereby made the duty of said county court to call for the approbation of the legal voters of the county by advertising an election, to be held by the Sheriff of the county, giving at least thirty days' notice of the same, such notice to be posted up at the election precincts in the county, which notice shall specify the amount of stock proposed to be taken by the county, and when payable. And if a majority of the votes polled be "For subscription," then and in that case the chairman of the county court shall carry into effect the will of the majority, and shall subscribe the amount of said stock in such railroad company or companies so voted for. But if a majority of the polls be "No subscription," then the questson as to the propriety of subscribing stock, as before provided for, shall not again be propounded until after the expiration of six months, and not then without a concurrence of a majority of the justices of the peace of said county.

* * * * * * * *

Sec. 12. *Be it enacted*, That for the purpose of meeting any unexpected demand on the part of the board of direc-

tors of the company, in the construction of said railroad, to be expended as aforesaid, at a time when the county may have no railroad tax on hand, the county court may anticipate the collection of the said taxes voted as aforesaid, by the issuance of the county warrants, payable as desired by said board of directors, bearing an interest of six per cent. per annum, which warrants may be received by the board of directors in payment of so much of the stock subscribed; in such cases the sufficiency of tax voted and levied as aforesaid, shall be paid into the county treasury, and shall be applied to the redemption of said warrants, and certificates of stock shall issue to the taxpayers, as is prescribed in this act.

2. *Of the Subscription to Railroads by Counties and Incorporated Towns—Code of Tennessee, which took effect May, 1858.*

Section 1142. Any county, incorporated town, or city, may subscribe for stock to an amount not exceeding, in the aggregate, one-fifteenth of its taxable property, nor more than one million of dollars, in railroads, running to, or contiguous thereto, upon the following terms and conditions:

1143. The approbation of the legal voters of the county, town or city, to the proposed subscription, must be first obtained, by election held by the sheriff, in the usual way in which popular elections are held.

Act of 1851, 2, ch. 117, sec. 2.

3. *Act of 1835.*

Section 1. There shall be established a court in each and every county in this State, to be held by the justices of the peace thereof, in the court houses of the respective counties, on the first Monday in every month, for the transaction of such public business as is herein prescribed, to be called the County Court, and said court shall have power

to continue its sessions from day to day until the public business thereof shall be disposed of.

Sec. 2. "It shall be the duty of the justices of the peace to attend at the court-houses of the respective counties on the first Monday in every month, and one-third, or twelve of the acting justices in each county, shall be a competent quorum to do and transact all kinds of public and county business prescribed by this act, except to assess a tax, or to appropriate public money, which shall require a majority of all the magistrates of the county to vote in the affirmative; *Provided*, that twelve justices, or one-third, shall have power to make appropriations for county purposes not exceeding fifty dollars."

* * * * * * * *

Sec. 14. The county courts established by this act are hereby authorized at the second term, in any year, to levy and cause to be collected a tax for county purposes, as contemplated by the twenty-ninth section of the second article of the Constitution, upon such principles as may be established in regard to State taxation; *Provided*, that if said court shall fail to levy a tax at the session above designated, they shall do so at their next session.

See Caruthers and Nicholson, Stat., pp. 198, 99, 201.

4. A majority of all the magistrates of the county is required to levy a tax, or to appropriate public money to an amount over fifty dollars.

Code, sec. 4190, May, 1858.

The county courts are required, at the first term, in every year, to impose and provide for the collection of the tax for county purposes, and fix the rate thereof, but if they omit such duty, at the first term, it shall be performed, at the April, or any subsequent quarterly session.

Code, sec. 4193, [act of 1837, 8, ch. 135 sec. 2.]

CONSTITUTIONAL PROVISIONS.

1. No freeman shall be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, or property, except, by the judgment of his peers, or the law of the land.

Art. 1, sec. 8, Constitution, 1834.

2. The Legislature shall have no power to suspend any general law for the benefit of any particular individual; nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual, or individuals, rights, privileges or immunities, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. Provided always, the Legislature shall have power to grant such charters of incorporation as may be deemed expedient for the public good."

Art. 11, sec. 7, Con. 1834.

R. H. WALLACE ET AL.
v.
THE COUNTY COURT OF TIPTON COUNTY ET AL. } Opinion.

In 1858 the Mississippi River Railway Company was incorporated by the Legislature of this State. The company organized during that year or the year following. Its projected course was through Tipton, Lauderdale, and other counties between Memphis and the Kentucky line. But little more than the organization of the company was done towards the construction of the road until after the termination of the late war between the States.

In August, 1866, one Abram S. Mitchell became the President of the company, and so continued until June, 1870.

On the 25th of February, 1867, the General Assembly passed an act for the benefit of the Winchester and Alabama Railroad Company, and other purposes, the sixth section of which is as follows:

"*Be it further enacted*, That the County Court of any county through which the line of the Mississippi River Railroad is proposed to run, a majority of the justices in commission at the time concurring, may make a corporate or county subscription to the capital stock of said railroad company of an amount not exceeding two-thirds of the estimated cost of grading the road bed through the county and preparing the same for the iron rails; the said costs to be verified by the sworn statement of the president or chief engineer of the company. And after such subscription shall have been entered upon the books of the railroad company, either by the chairman of the County Court or by any other member of the court appointed therefor, the court shall proceed without further reference or delay to levy an assessment on all the taxable property within the county sufficient to pay said subscriptions; and the same shall be payable in three annual instalments, commencing with the fiscal year in which said subscription shall be made. And it shall be lawful for the County Courts making subscriptions as herein provided to issue short bonds to the railroad company in anticipation of the collection of the annual levies, if thereby the construction of the work may be facilitated; and in all other respects, except as herein specifically provided, the capital stock of said railroad company to be subscribed by counties shall be governed by the general internal improvement laws of the State."

And on the 5th of November, 1867, the Legislature passed another act, amendatory of the act of 25th February, 1867, just quoted, which is as follows:

"*Be it enacted*, That the sixth section of an act passed on the 25th of February, 1867, entitled an act for the benefit of the Winchester and Alabama Railroad Company, and for other purposes, be and is hereby amended as follows, to-wit:

"That the subscription authorized in said sixth section to be made to the capital stock of the Mississippi River Railroad Company by the counties along the line of said railroad may be made at any monthly term of the county courts of said counties, or at any special terms of said courts; *provided*, that a majority of all the justices in commission in the counties respectively, shall be present when any such subscription is made, and provided further, that a majority of those present shall concur therein."

At the February Term, 1869, of the County Court of Tipton county, said Mitchell, as President of the Company, presented his affidavit, "that the cost of the grading and preparation of the road-bed for said railroad through the county of Tipton, according to the estimate of the chief engineer thereof, would exceed three hundred and eighty thousand dollars."

Thereupon, upon motion of William McIntosh, Justice, etc., it was ordered, pursuant to the authority conferred upon the counties lying along the route of said railroad, by the act of twenty-fifth of February, 1867, that the county of Tipton, by the Chairman of said court, be instructed to subscribe the sum of two hundred thousand dollars to the capital stock of the Mississippi River Railroad Company, on the terms and conditions prescribed by the act of the Legislature aforesaid, authorizing such subscriptions to be made. The order made an appropriation

of $200,000 for said purpose, to be paid at the rate of $40,000 annually, in bonds maturing in one, two, three, four and five years, bearing six per cent. interest, payable semi-annually, and the same order directed that a special tax should be levied on the taxable property of the county to meet such annual appropriations, and three members of the court were appointed to represent the stock in the meetings of the stockholders.

At the July Term, 1869, of said county court, the interest on the bonds was made payable annually, instead of semi-annually, as by order of the preceding February term, and a tax of two and a quarter cents was levied upon every dollar's worth of taxable property within the county, to meet the payments upon said subscriptions as they fell due.

At the July term, 1870, of said county court, it was ordered that the bonds of the county to said Mississippi River Railroad Company had been issued without a vote of the people or authority of law, and no tax should be levied to pay them, and a committee was appointed to employ counsel to resist the tax.

At the October term, 18, 1, the said county court accepted the proposition of said railroad company to extend the time of payment of the bonds to ten years. This extension was proposed upon condition that the county court should immediately levy a tax to pay what was then due, and might thereafter become due, under the proposed extension of time: and the court then levied a tax of eighty-five cents on each hundred dollars' worth of taxable property.

At the July term, 1872, the said county court levied a tax of one per cent. upon the taxable property of the county to meet said subscription.

At April term, 1873, the railroad company made application to the County Court to issue coupons or warrants

for one-half of the matured bonds and interest, which application "was laid over until the July term of this court." And at the July term, 1873, the court refused to issue such coupons on warrants, and at a subsequent day of said term a tax of ten mills on the dollar was levied to meet the instalment and interest falling due in the year 1873.

In the meantime, on the 22d May, 1873, the complainants, taxpayers of the county of Tipton, filed their bill, praying and obtaining an injunction to restrain Hall and Walker, the collectors of said railroad tax, from collecting the same, and asking a decree declaring the whole proceeding of the County Court to be unconstitutional, illegal and void, and enjoining all said defendants from any further attempt to collect or enforce the payment of said tax, and to order the bonds which had been issued, and held by the railroad company, to be surrendered, canceled and declared void. The County Court, the said Hall and Walker, tax collectors, and the Paducah and Memphis Railroad Company, by which name the consolidated companies of the Mississippi River Railroad and Paducah and Gulf Railroad were known at the time of the filing of the bill, were made defendants to the bill.

The bill charged the facts hereinbefore recited, and that the subscription of stock and levy of taxes was unauthorized, and that said county had issued bonds, which were then in possession of defendant, the railroad company. And that the said tax collectors had collected, and were still collecting, taxes under said illegal and void orders of the County Court, and had levied upon some of the property of some of complainants.

It was further alleged, that some of the persons acting and voting for said subscription and taxes, as members of the County Court, were not, in fact, justices of the peace, were not elected by the people as such, but were assuming to act under commissions issued by Wm. G. Brownlow, as

governor, who had no authority to issue such commissions, except to such persons as had been elected by the people, in the manner prescribed by the Constitution.

The railroad company filed its answer, and admits the county subscription was made as alleged, and under the authority of the acts of the Legislature referred to in the bill, and insists that the subscription and levy of taxes and issue of bonds were valid and authorized acts of the County Court, and that, if there were any irregularities in the proceedings of the County Court, the new contract made by the order of October term, 1871, of said County Court, the payment of taxes by the taxpayers operated as a ratification of the subscription, and as an estoppel upon the said county and taxpayers to deny the validity of said subscription; and defendant insists that sec. 1145 of the Code has been complied with so far as it has not been modified or repealed by the act of February 25th, 1867. They also aver, that the railroad company has done all the law required to be done to authorize them to receive the bonds.

The answer of the company "admits that it holds some of the bonds so issued as aforesaid, and says that others have been hypothecated and sold all over the country and the proceeds used for the completion of the road, as it had the right to do; that many of the bonds are beyond its control and their whereabouts at present is not within the respondent's knowledge."

Hall and Walker answer and admit that they are collecting the railroad taxes, and adopt the answer of the railroad company.

The County Court failed to answer, and a judgment *pro confesso* was entered against it.

At the May term, 1874, of the court, certain non-residents of the State were upon their own petition, setting forth that they were holders of part of the said $200,000 Tip-

ton Co. bonds, allowed to be, and were made, defendants to the cause, with leave to plead, demur or answer the bill. Upon being made parties defendants without making any defence in any of the modes indicated in the order admitting them as defendants at the same term, petitioned under the act of Congress to have the cause removed to the United States Circuit Court at Memphis, which was ordered to be done at the same term, and the cause as to them was removed to said U. S. Court.

At the May term, 1875, the complainants asked and obtained leave to file, and thereupon did file, their amended bill, alleging that they had recently discovered new facts, showing the fraudulent manner in which said subscription and issuance of bonds had been obtained and procured; that the President of the company, by the influence he had with the Governor, prevented justices elected from being commissioned and procured him to commission certain persons as justices of the peace who were not elected, and were commissioned upon the promise to vote for said subscription; that others were influenced by bribery and other corrupt means to vote for the subscription, although they knew the people were opposed to it.

The order allowing this amended bill to be filed allows the defendant until June rules to answer it. It then proceeds as follows: "And the defendant, the Paducah & Memphis Railroad Company, is allowed in its said answer to said amended bill to incorporate therein, as by way of amended or supplemental answer (or either, as the case may be), as to its answer hereinbefore filed, to the original bill of complainants, any matter of disclaimer of interest in the subject matter of this suit or cause.

The railroad company filed its answer to the amended bill, and after a very explicit denial of the several charges of fraud, bribery and corruption, says "that while in its answer to said original bill hereinbefore filed, it admitted

that it held some of said bonds, yet now it is the owner and holder of none of said bonds, and has no interest in this cause whatever, for respondent states that as above related, when said bonds were taken by it, and redeemed, that then it again issued said bonds on the faith of said ratification of said county court, at its October term, 1871, and other terms, and obtained moneys used in the building of said road, as aforesaid, and said bonds, then, and before the filing of said bills, passed into the hands of other holders for value." "And now this respondent disclaims all and any interest in, or because of any of the matters and things complained of in complainants' said bills."

This answer was filed 5th July, 1875, and at the August term of the court next thereafter, the said defendant filed a formal plea of disclaimer by leave of the court, complainants excepting to the action of the court in granting leave to file said plea, and the defendants, Hall and Walker, answered, and accompanied their answer with a plea of a want of necessary and proper parties. Upon the said answers and pleas and judgments *pro confesso* against the county court, and facts admitted and affidavits treated as depositions by agreement with the county court, the circuit judge who presided in place of Chancellor Livingston, who was incompetent to try the cause heard, and determined the cause, holding the acts of 25th February, 1867, and 5th November, 1867, to be unconstitutional, and the subscription of stock by the county court unauthorized and void, as well as those orders directing the levy of taxes and issuance of bonds to said railroad company, and also all orders passed subsequently in ratification of previous orders.

The court also adjudged and declared that the passage of the aforesaid acts of Assembly of 25th February, and 5th November, 1867, the subscription of stock and issu-

ance of bonds, were procured by fraud of said railroad company, and for this reason also adjudged the proceedings of the county court to be void.

The injunction restraining the county court from levying, and Hall and Walker from collection of taxes, was made perpetual. But the court was of opinion, and so decreed, that no decree could be rendered against the railroad company, upon its answer and plea of disclaimer, and dismissed the bill as to said company with costs.

No other relief against Hall and Walker was granted than perpetuating the injunction inhibiting the collection of taxes and giving costs against the county.

The complainants and the county court have appealed, and Hall and Walker have filed the record as a writ of error.

The pleadings and facts present several questions of interest:

1. Had the County Court under the acts of February and November, 1867, or any other, the power to make the subscription of stock to the railroad company to issue bonds to them and levy a tax for their payment.

The act of 1852, Code, sec. 1142, et seq., is a general law of the land, giving power to all counties, cities and towns, upon specified conditions, to make such subscriptions, which has been held by this court to be a constitutional enactment. 1 Sneed, 637, holding the construction of a railroad through a county to be a county purpose within the meaning of article 2, section 29, of the Constitution of 1834, which ordains that "The General Assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county pur-

poses respectively, in such manner as may be prescribed by law."

In the case already cited it is said, in construing the foregoing section of the Constitution, that the power to be conferred by the Legislature to impose taxes for county purposes "is to be communicated to the *counties*, not to the courts, nor to justices, nor to the officers." That the mode of its exercise is left to the discretion of the Legislature.

1 Sneed, 677.

Code, sec. 1142, provides that any *county* may subscribe for stock in railroads; subsequent sections define and prescribe the mode, conditions and instrumentalities by which the subscription may be effectuated. The fundamental and indispensable condition is that the approbation of the legal voters of the county must first be obtained by an election, held by the sheriff, as in other cases of popular elections. In order that this vote may be taken, the county court may order an election upon application of the commissioners appointed to open books for subscription of stock in such road, or of the board of directors, if the company is organized. If a majority of the legal voters should vote for subscription, then the judge or chairman of the county court shall subscribe the amount of stock so voted for in the name of the county, and it shall be the duty of the county court to levy a tax to meet the installments of subscription as made, etc. These duties, imposed by the act of 1852, upon the county court, were held to be ministerial only, no power to levy a tax, appropriate money or contract a debt, nor any *quasi*, legislative or judicial power is given. All this is referred to the people. Every duty required to be performed by the county court is merely instrumental or ministerial, the court acting under the mandate of the law in carrying out the will of the people.

1 Sneed, 680–1.

It was therefore held that this unministerial duty might be performed by the quorum court. But the case cited gives no countenance to the idea that the subscription of stock in a railroad company by the quorum or quarterly court would be valid without the popular sanction obtained in the mode prescribed by the statute.

Art. 1, sec. 8, of the Constitution of 1834 provided that no freeman, etc., shall be deprived of his property but by the judgment of his peers or the law of the land; and the term "law of the land" has been repeatedly defined by our courts to mean a general and public law, operating equally upon every member of the community. And art. 11, sec. 7, of that instrument provided that "the Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any laws granting to any individual or individuals rights, privileges, immunities or exemptions, other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law."

In view of what has been already said of the act of 1851-2 as a law of the land, it is scarcely necessary to do more than to read the acts of February 25 and November 5, 1867, to be satisfied of their unconstitutionality.

Without discussion of exceptions and objections taken to the validity of said acts upon the ground of the corrupt devices employed to procure their passage, nor of the alleged bribery to obtain the votes of the County Court in levying the tax as well as in procuring the subscription to be made, the total want of power to do such acts by the county courts are decisive against the validity of the subscription and all the subsequent acts and orders making provisions to pay it.

The general railroad law made the subscription of stock wholly dependent upon the vote of the people.

The acts procured to be passed by the Legislature in 1867 in the interest of the Mississippi River Railroad Company dispensed with this vital requirement, and upon the face of the act of February 25, it is shown that the Legislature intended to exempt this particular company from the operation of the law of the land, for the conclusion of the sixth section is in these words: "And in all other respects *except as herein specially provided*, the capital stock of said railroad company to be subscribed by counties shall be governed by the *general* internal improvement laws of the State."

The *exception* "*specially provided*" in this special act in favor of the Mississippi Railroad Company was dispensing with the popular vote, which the general law required, and some other differences of minor importance.

The acts of February 25 and November 5, 1867, are in conflict with the general internal improvement act of 1851, 2, and repugnant to the two sections of the Constitution of 1834, above cited, and are therefore utterly null and void.

The County Court, never having had any authority to make the subscription of stock, nor to levy taxes for its payment, could not, of course, ratify its own void act, having no more power to ratify than it had to perform the original unauthorized acts.

Nor has there been any such approval or acquiescence on the part of the taxpayers as estops them from contesting the validity of the acts of the County Court.

2. It has been very earnestly and plausibly argued, that the court below had no authority to pronounce a decree declaring the validity of the subscription of stock, and the

illegality of the levy of taxes, because of the want of proper parties in the cause.

The argument is, that part of the bonds issued are in the hands of innocent holders, who are necessarily affected by the decree, and that they are necessary parties, and not being parties, no decree can be pronounced which declares the several acts of the County Court invalid, and the issuance of the bonds unauthorized.

It is a general rule in equity, subject, however, to some exceptions, that all persons materially interested, either legally or beneficially, in the subject matter of a suit, are to be made parties to it, either as plaintiffs or defendants, so that there may be a complete decree, that shall bind them all, thus preventing future litigation and a multiplicity of suits.

Story's Eq. Pl., sec. 72.
1 Danl. Ch. Pl. and Pr., 181, 2.

A person may be affected by the demands of a complainant in equity, either immediately or consequentially, where he is in possession of the *subject matter* of the suit, or has an interest in it, in possession or in expectancy, he has such an immediate or direct interest as makes him a necessary party to the suit. But persons not directly or immediately interested in resisting complainant's demands are yet liable to be affected by them consequentially, because complainant's success against defendants may give defendants a right of action against them. Such persons, therefore, as being *consequentially* liable to be affected by the suit, must, frequently, also be made parties to it.

1 Danl. Pl. and Pr., 238, 9.

To the general rule, that all persons who are interested in the object of the bill are necessary and proper parties, there are exceptions, and, as the rule is founded upon pub-

lic convenience and policy, courts of equity will not suffer it to be so applied as to defeat the purposes of justice, if they can dispose of the merits of the case before them without prejudice to others who are not parties, or if the circumstances of the case render the application of the rule wholly impracticable.

Story's Eq. P., sec. 77.

If a party be out of the jurisdiction it is a sufficient ground for dispensing with his being made a party, and the court may proceed to decree on the questions between the parties who are before the court if no decree is rendered against such absent persons, even though such a decree may incidentally question or touch upon their rights.

Story Eq. P., secs. 78–82. See also ib., sec. 135 *a*.

In this case no decree was sought or rendered against the holders of the bonds. They had been made parties defendant in the cause upon their own petition, and then by their own voluntary act, under the provisions of the act of Congress for the removal of causes from the State to the Federal Courts, had the cause removed as to them to the United States Circuit Court of Memphis. And although at the time of such removal the court below had jurisdiction of them and their rights in the cause, they elected to defeat such jurisdiction, and by their own voluntary act made it impracticable for the State Court to render a decree either for or against them.

But the State court had obtained jurisdiction of the other parties and still retained it, and the right to adjudicate the questions raised by the pleadings, as between the parties to this suit. Nor can the voluntary withdrawal of the bondholders be allowed to defeat the jurisdiction of this court to render such decree, without prejudice to persons having an incidental interest as between the remaining parties to this cause.

The effect of the amended or supplemental answer of the Paducah and Memphis Railroad Company and of their disclaimer of interest in the subject-matter of the suit therein and of the formal plea of disclaimer of such interest has also been discussed.

A plea of disclaimer is the form of answer put in by a defendant where the bill charges that such defendant claims an interest in property in dispute. If the defendant denies that he claims any right to the thing demanded by the complainant's bill he may disclaim or renounce all claim thereto. But a disclaimer cannot be employed to shield a party from a liability charged in the bill nor shelter him from answering by disclaiming any interest in the matter of suit in cases where others may have an interest in it against him, he cannot disclaim his liability.

1 Dan. Ch. Pl. and Pr., 787, et seq.
Story Eq. Pl., sec. 838, et seq.

The bill charged that the railroad company had in its possession at the time of filing thereof some of the bonds of the county of Tipton, which complainant prayed might be surrendered up to be canceled. And if the facts were as charged a case for relief against the company was made by the bill which could not be defeated by a plea of disclaimer of interest in the subject matter of the suit.

The court below, upon its application, granted to the said railroad company, leave to file an amended or supplemental answer without any disclosure of the nature or extent of the proposed amendment, further than that the leave extended to "any matter of disclaimer of interest, etc." This leave was granted without any affidavit showing grounds for the amendment. But the leave was granted and the amended or supplemental answer was filed without any objection thereto being made. That amendment denies the charge in the bill that respondent had any of the bonds at the time of the filing of said com-

plainants' bills or afterwards; admits that it had some before the filing of the bill, but that they were disposed of by it before said bills were filed, and although the explanation of its former answer admitting that it then held some of the bonds, is not very satisfactory in the amended answer, yet it was filed and was unexcepted to, and explicitly denies the allegations of the bill. No objection having been taken to filing of the amended answer, we cannot now hold that it was improperly allowed, or that its averments and denials are to be disregarded.

Treating the amended answer as properly filed, and operating in its denial of the possession of any of the bonds of the county, as changing the admissions contained in the original answer, we affirm the decree below, dismissing the bill as to said railroad company, not, however, upon the grounds of its disclaimer of interest, but upon its denial of the charge of having bonds of the county at the time of the filing of the bill, there being no evidence whatever to contradict this denial of the answer.

The result is, that the decree of the court below will be affirmed, and the costs of this court and the court below will be paid by the county of Tipton.

DEADERICK, J.

WALLACE ET AL. v. TIPTON COUNTY ET AL. } Second Opinion of Supreme Court of Tennessee on application for rehearing.

An application to re-open this cause has been presented, but after the time limited by a rule of the court for the presentation of such petitions; and upon this ground further examination of the cause upon the main question, upon which it was decided, might well have been refused.

But upon the explanation of counsel as to the cause of the delay in presenting the petition, and in view of the

important interests involved, the cause has been reconsidered.

We held that the act of 1851–2, ch. 117, Code, sec. 1142, etc., was a law of the land prescribing the mode in which, and the conditions upon which, counties might subscribe stock in railroad companies. And so it was held in the case of L. & N. R. R. Co. v. Davidson Co. et al., in which case its constitutionality was contested—1 Sneed, 476. We also held that the acts of 1867, under which the subscription of stock by Tipton county was made, were partial and special laws in conflict with the general law and repugnant to art. 11, sec. 7, of the Constitution of 1834. It is said that, in 3 Head, 322, it was held in the case of the corporation of Chattanooga v. McCallie, that art. 2, sec. 29, conferred the power on the Legislature, to authorize the mayor and aldermen to subscribe for stock without a vote of the inhabitants, and the recent case of Ross v. Anderson County recognizes the same doctrine. In the first named case the question is not discussed at all, a simple declaration of power conferred by the Constitution, without any reference to a discussion of the effect of the act of 1851–2, as an exercise of that power. In the other case it is held, where the power exists and has been exercised, a mere irregularity in its exercise may be cured by legislative enactment, or may be insufficient to render the acts void.

In the case of McKinney & Co. v. Memphis Overton Hotel Co., opinion by Judge Freeman, at the April term, 1873, of this court, the question under discussion arose upon a charter of said corporation, (company,) authorizing it to issue bonds bearing more than six per cent., the legal rate of interest at the time the charter was granted. The court say, the very fact that the act of the Legislature had to be passed for this purpose, settles, we think, the question conclusively, that it is a law passed in derogation of the general law of the land to enable something to be done that could not legally be done, so as to effectuate the end desired.

See also 2 Head, 276.

This case is a very strong illustration of the soundness of the argument presented in the foregoing extract. There was a general law allowing stock to be subscribed by counties to railroad companies, but legislation was needed to relieve this company and county from the operation of that general law, and accordingly it was procured; and the county court having been organized with a view to subserving the interests of the railroad company, the scheme of subscription, taxation and issuance of the bonds of the county was consummated by corrupt means which we refrained from commenting on, in the opinion delivered, only because the evidence disclosing the facts could not be looked to as against the company. We allude to it now, by way of illustrating the wisdom of the provision inhibiting the passage of partial laws, which are often attempted to be passed in the interest of oppression and injustice.

The popular approval by their votes before lending credit to corporations by counties, towns and cities has been deemed so necessary to the protection of the people against onerous taxation, that the Constitution of 1870 has forbidden it to be done without assent of three-fourths of the voters in the election upon the question, art. 2, sec. 29.

In the case of McKinney & Co. v. the Overton Hotel, when the law allowing 10 per cent. interest to be taken was held to be inconsistent with the general laws of the land, "it was very plausibly argued the proviso of the section of the constitution prohibiting said special laws, excepted from its operation such powers as were conferred in charter of incorporation." But this court held that the Legislature could not, in the act of incorporation, authorize such corporation either to give or take any more than the uniform and equal rate of interest which is fixed by the general law of the land. We conclude by saying that we are satisfied with the correctness of the opinion heretofore delivered, and adhere to it; and dismiss the application for a rehearing.

[Signed,] DEADERICK, Judge.

ARTICLE 2, SECTION 29, CONSTITUTION OF 1870.

* * * * * * * *

But the credit of no county, city, or town, shall be given or loaned to, or in aid of any person, company, association, or corporation, except upon an election to be first held by the qualified voters of such county, city, or town, and the assent of three-fourths of the votes cast at such election. Nor shall any county, city, or town, become a stockholder, with others, in any company, association, or corporation, except upon a like election and assent of a like majority. But the counties of Grainger, Hawkins, Hancock, Union, Campbell, Scott, Morgan, Grundy, Sumner, Smith, Jenkes, Van Buren, White, Putnam, Overton, Jackson, Cumberland, Anderson, Wayne, Marshall, Cocke, Mason, and the new county herein authorized to be established out of the fractions of Sumner, Macon, and Smith counties, and Roane, shall be excepted out of the provisions of this section, so far that the assent of a majority of the qualified voters of either of said counties, voting on the question, shall be sufficient, when the credit of such county is given, or loaned, to any person, association, or corporation.

Provided, That the exception of the above named counties shall not be in force beyond the year one thousand eight hundred and eighty, and after that period they shall be subject to the three-fourths majority applicable to the other counties of the State.

OFFICE SUPREME COURT U. S.
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In United States Supreme Court.

ROGERS LOCOMOTIVE AND MACHINE WORKS
vs.
TIPTON COUNTY.

REPLY

To Briefs of Counsel for Defendants in Error.

Much of the argument, of the other side rests on the assumption, that art. 1, sec. 8, of the constitution of 1796, is identical, in meaning, and effect, with sec. 7, art. 11, of the constitution of 1834.

This position is not tenable.

1. It is not probable that the framers of the constitution of 1834, in a different section, and article, would embrace a provision of the precise sense and effect of another already embraced, in a previous section and article.

2. The language is totally different.

3. In the head notes to Burton v. School Commissioners, Meigs R. 505, the reporter, Return J. Meigs, a critical and learned lawyer, of much celebrity, shows, that in his opinion, these provisions do not mean the same thing.

4. In a case involving the constitutionality of a statute, enacted in the year 1856, the Supreme Court of Tennessee,

in 1858, applied these constitutional provisions, in such manner, as conclusively settles, that they are not of the same exact import.

So much of the opinion of the court, by McKinney, J., as is pertinent, is as follows:

"We feel constrained to declare this extraordinary enactment unconstitutional and void. There is much plausibility in the argument, that it violates the spirit of both the 8th and 20th sections of article 1, inasmuch as it attempts to deprive certain persons of their property, contrary to the law of the land, and is also a 'retrospective law.' But, perhaps, it is a still more palpable infringement of sec. 7, art. 11, which declares, 'that the Legislature shall have no power to suspend any general law, for the benefit of any particular individual.' Nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land."

Morgan v. Read, 2 Head 281.

Judge McKinney was a member of the convention that framed the constitution of 1834. He bore a conspicuous part in that body. He was eminent as a judge. His opinion, therefore, that one of these constitutional provisions is not simply the equivalent of the other, ought to be conclusive.

5. Under the constitution of 1796, which contains sec. 8, art. 1, of the constitution of 1834, it was never doubted that the Legislature had power to grant charters of incorporation.

But under the constitution of 1834, in view of sec. 7 of art. 11, it was held by the Supreme Court, that without the proviso to that section, the Legislature would have been without power to grant charters of incorporation.

5 Heisk. 530.

This demonstrates that there is a marked difference in the meaning and force of these provisions.

More is not required to show the unsoundness of this argument, and the error of the assumption, on which it is based.

ROSS v. ANDERSON COUNTY; CLAY v. JUSTICES OF HAWKINS COUNTY.

The cases of Ross v. Anderson County, and Clay v. Justices of Hawkins County, printed with the briefs of adversary counsel, and the laws which they construe, are easily distinguished from the present case.

1. In each of said cases the debt was created, under the general law of 1852, by the popular vote.

2. The special acts, applicable to each, had reference to the mode of paying, and not to the creation of said debts.

3. They did not suspend any general law, although not applicable to all the counties in the State, as there was no general law in existence prescribing the mode of payment.

4. Said acts did not apply to one of many railroads, but applied to *all railroads*. Nor did they profess to be amendments to the charter of any railroad; but they were, in terms, authority to the counties specified, to subscribe, by popular vote, to the capital stock of railroad companies, and issue bonds therefor.

5. The question of constitutionality, o
they were partial loans, was not raised.
tion made that they suspended the ge
individual, or individuals. It could not ...
was not the case.

6. These counties had power without these acts, after they had created a valid debt, under the general law, to give notes, or issue bonds therefor. They had power to compromise a valid debt, or get forbearance, or an extension of payment, and give notes or bonds.

7. It is not necessary to the position of the plaintiff in error to go the length of maintaining, that a law enabling a single county to subscribe for stock in a railway company, or companies, would be void, if that were all. Such is not the case in hand.

8. Nor is it at all necessary to maintain the proposition that a county is an "*individual*," in the sense of art. 11, sec. 7. But when laws undertake, not merely to confer power on counties, for local purposes, but undertake, also, to suspend the general law, for some particular person, then they become obnoxious to the constitution.

9. And a chartered corporation is an "individual," or person, in the sense of article 11, section 7.

Otis v. Ware, 8 Gray 509.

J. C. Neely v. The State, Supreme Court of Tenn., Jackson, 1880; Code of Tenn., sec. 50.

See also,

10 Wis. 351; 8 Porter, Ala., 404; 22 Ill. 9.

THE POSITION OF ADVERSARY COUNSEL THAT THE LEGISLATION IN QUESTION WAS AUTHORIZED BY THE PROVISO TO SEC. 7, ART. 11, OF THE CONSTITUTION OF 1834, NOT SOUND.

The language of the proviso is as follows: provided always the Legislature shall have power to grant such charters of incorporation, as may be deemed expedient for the public good.

This proviso was no license to the Legislature to confer

all manner of rights, and powers, under color of creating corporations; but authority to create, and endow corporations, as they were known, and understood to be, at the time the proviso was adopted. The nature and characteristics of corporations were then so well defined, and settled, that the grant of corporate existence, carried with it, by necessary implication, all the usual attributes, whether named in the grant or not.

A corporation, says Mr. Kid, is a political person, capable like a natural person, of enjoying a variety of franchises; it is to franchises, as the substance to the attribute; it is something to which many attributes belong, but it is itself something distinct from these attributes.

Angell & Ames, sec. 4.

Franchises are special privileges conferred by government, on individuals, and which do not belong to the citizen generally, of *common* right, and, in this country, no franchise can be held, which is not derived from the law of the State.

Bank of Augusta v. Earle, 13 Peters 519.

The State is the fountain of all privileges, and franchises, and grants the same to corporations, or natural persons.

Such grants do not suspend any general law, for the benefit of any particular individual, nor are they the enactment of laws for the benefit of individuals, inconsistent with the general law. But, inasmuch, as they are rights, privileges, and immunities, conferred on individuals, which is one of the things inhibited, by the body of sec. 7, article 11, the proviso became necessary, to enable the Legislature to make these special grants to corporations.

5 Heiskell 530.

As long as the power is so exercised as to confer franchises, by charters of incorporation, it is in pursuance of

the proviso. But, whenever this limit is transcended, and the effort is made, not only to confer franchises, by charters of incorporation, but, also to suspend the general law, in favor of the corporate entity, or in reference to the corporate officers or agents, then to that extent, the act is inhibited, and void.

Attention is invited to some of the Tennessee decisions, in support of this view.

1. Section 22 of the charter of the Union Bank provided, that if its officers appropriated its funds, with intent to defraud the bank, or made false entries, with intent to cheat it, that such acts would make them guilty of felony. This was held, not to be part of the franchises of the corporation, and void.

Judge Reese, delivering the opinion of the court, said: That it was not to be regarded, as a part of the contract between the State and the corporation; and even if so regarded, would derive no additional validity from that circumstance. That it was to be treated, as if it stood aloof, from the charter, and was an act, of one section, passed after the grant of the charter.

Budd v. The State, 3 Hum. 489.

2. A similar question arose in the case of Mayor, &c., v. Dearborne, 2 Sneed, 104, and was decided the same way.

3. A director in the Memphis and Charleston Railroad Company, under a charter granted in 184—, claimed exemption from serving on juries; but the provision exempting the officers of that road from the performance of such duties, was held unconstitutional and void.

J. C. Neely v. The State, MS., Jackson, April term, 1880.

4. A provision, in the charter of the Mississippi River Railway Company, (the very company in whose favor the

special legislation, under consideration, was passed), authorized the jury, in assessing damages taken for right of way, to take into consideration, the benefits accruing to other lands, of the proprietors, along the line of the road, not part and parcel of those appropriated for the road, was held void, because it was *special* legislation.

Paducah & Mem. R. R. Co. v. Stovall, 12 Heisk. 1.

This special provision of the charter was held to be inconsistent with the general law, as contained in section 1338 of the Code, and therefore, "special legislation, and obnoxious to the constitutional objections urged against it."

Ibid, pp. 4, 5.

5. The Overton Hotel Company was authorized by its charter to make its bonds, bearing interest at the rate of ten per cent. The general law passed in pursuance of sec. 6, of art. 11, of the constitution of 1834, fixed the rate of interest at six per cent. It was contended, for that company, that the general law was made, as a rule, for *natural* persons, and not for *corporations*, which by the proviso to sec. 7, art. 11, were excepted from the general law. The grant was held void.

McKinney v. Overton Hotel Co., 12 Heisk. 104.

It is attempted to weaken the force of this case, by saying that the general law, violated by the obnoxious grant, in the charter of the Overton Hotel Co., was passed in pursuance of a section of the constitution, requiring the Legislature to establish, by law, a uniform rate of interest. But this is begging the question. Corporations are subject like natural persons, to general laws, or not. The moment it is conceded they are subject to any law which is general, just as natural persons, the argument that general laws were not made for them, is overthrown, and it is immaterial, by force of what constitutional provision, the general law was passed.

None of the cases cited, deny, or question the power to grant charters of incorporation, and endow them with all rightful powers; but what they settle is want of power to pass, under color of a charter of incorporation, a law, which supersedes the general law, in the interest of such corporation. That is what the argument of the other side insists may be done, and is warrant, as they say, for the legislation under consideration. It is what the cases cited adjudge cannot be done without being obnoxious to the constitution.

One of the cases brings the question directly home. It arose on a special provision in the charter of the Mississippi River Railway Company which suspended the general law on the subject of damages for right of way land, in favor of that company. It is the very thing which our adversaries claim the proviso authorizes. It is just what the highest court of the State adjudges to be wholly unauthorized.

It is not reasonable to suppose that the door to class legislation would have been so sedulously guarded against natural persons, yet left open as to corporations.

According to the construction placed by the other side on the proviso, the following grants to corporations would be valid:

1. To a corporation to buy and sell lands, by parol, in suspension of the general law.

2. To a single corporation, the right to take the deed of a married woman, or a given number of married women, without privy examination, in suspension of the general law.

3. To accept subscriptions to the capital stock of a railway company, from one married woman, or one minor, or from all the minors and married women, in four out of many other counties, contrary to the general law.

4. To authorize the officers of a corporation to vote out of their counties, contrary to the general law.

5. To a corporation to have its suits decided in a particular court, established for that purpose, contrary to the general law.

6. To the officers and employees of a railway corporation, who were not naturalized, or under twenty one years of age, the right of suffrage, contrary to the general law.

Such would be the inevitable result, under the logic of adversary counsel.

Undoubtedly, all such grants, although made under the supposed authority of the proviso, would have been obnoxious to the constitution, and void.

CASES RELIED ON BY THE OTHER SIDE, IN SUPPORT OF THEIR VIEW OF THE PROVISO.

1. Memphis City Water Company v. Memphis, 5 Heisk. 495.

This case involved a contest between the water company and the city, the water company claiming an exclusive grant for thirty years, and the city claiming that this grant was in derogation of its rights, and, also, that it was a monopoly, and therefore void.

It was held, that the grant to the city to erect waterworks, and supply water, was merely a delegation of power, for local government, to one of the arms of government, and might be taken away at pleasure.

That the charter of the water company was not a monopoly, and not in derogation of common right, as it conferred what no citizen had the right to.

See pp. 529, 530.

This case shows only a rightful exercise of the power, under the proviso, to grant charters of incorporation. It suspends no general law for any particular individual, nor was it the passage of a law for individuals, inconsistent with the general law.

The city held the grant of power, only, as a local governing agent of the State. No right was invaded in transferring the governmental power from the local governing agent to a private corporation, and making it a vested right in that corporation, in consideration of certain duties imposed on it, for the benefit of the public.

2. Knoxville and Ohio Railroad Co. v. John H. Ricks.
See Humes & Poston's Brief, p. 114.

This case presented two questions:

1. Had the State power, under the constitution of 1834, in granting a charter to a railroad corporation, to exempt it, for a specified time, from taxation?

2. If such grant were valid, would it pass to a purchaser of the corporate franchises?

Both questions were settled in the affirmative. The case is without a solitary feature resembling the one under consideration. The power of the Legislature was properly exerted in granting the charter. It was a contract, and the taxes were released, in consideration of what was deemed equivalent benefits, to be derived by the State from the company, under the terms of the charter.

3. Hagan v. Union Bank, 1 Sneed, 716.

This charter was granted under the constitution of 1796. The question was whether the right to take seven per cent. interest, for the use of money, was a valid grant or not,

inasmuch as there was a general law, fixing the rate of interest at six per cent. The court properly held that the right was part of the franchise, and there being no inhibition, at that day, against suspending general laws, for individuals, it was held valid. The court said it was more in the nature of a contract than a law. It was undoubtedly part of the corporate franchises.

The legislation involved in this controversy is no part of the corporate franchise. All the laws on the statute books authorizing county subscriptions might be repealed, and no corporation could complain. The view of the other side would make these laws irrepealable, as part of the corporate grants.

On the contrary, they derive no aid from the fact that they are enactments in connection with corporations. They must stand or fall, just as if they were enactments, standing aloof from the charters of such corporations. And, if any such law undertakes to suspend the general law, (as the laws in question do), for the benefit of a single railway company, in counties through which many other railways have charters, it is undoubtedly obnoxious to the constitution, and void.

See Appendix for charters of other railroads in the counties specified in the acts of 1867 and 1869.

POSITION OF THE OTHER SIDE AS TO EFFECT OF STATE COURT DECISIONS.

The general proposition of the other side that municipal bonds are commercial securities, and therefore belong to the domain of general jurisprudence, notwithstanding the power to make them, depends on local law, and as consequence, that this court is under no obligation to follow State court decisions, as to the validity of such local law, is too broad and cannot be maintained.

It is conceded to be sound law, that where State court decisions would otherwise be regarded as conclusive, yet, if a contract when made was valid under the constitution and laws of the State as they had been previously expounded by its judicial tribunals, no subsequent action by its Legislature, or by its judiciary, can have the effect to make such contract invalid.

Gelpeke v. Duke, 1 Wall. 175.
County of Cass v. Johnston, 5 Otto 360.
Douglas v. Pike County, 11 Otto 677.

When a point is first made, and decided, in a circuit court of the United States, this court is not bound to reverse the decision of the circuit court, contrary to its own convictions, in order to conform to a State court decision, made in the meantime. Such a decision has not the character of established precedent, declarative of the settled law of the State.

Roberts v. Bolles, 11 Otto, 128, 129.

This statement of the doctrine is made in cases involving the validity of municipal bonds.

The general rule that the State court decision controls, on such questions, is reaffirmed, in all the cases. But there are exceptions, and the extent, of such exceptions, is shown in the cases cited above.

When there has been no State court decision, and the point has been first raised, and determined in the circuit court of the United States, a subsequent adverse State court decision, will have great weight here, on a question involving, simply the construction of the local law; provided such law has not been previously construed otherwise, by the settled course of decision of the State court.

The laws involved in this litigation were never passed upon by the State court, before its decision in Wallace v.

Tipton county. Nor was any law of a like character ever held valid by any former decision of that court.

In all the cases cited by the other side, the distinctive characteristics that stamp this legislation as obnoxious to the constitution of the State, were absent.

In the cases cited from 1 Wallace 175, 5 Otto 360, and 11 Otto 677, it appears that the identical law had again and again been held valid by the State court. There is no pretense of anything of the kind in the case under consideration.

In the case cited from 11 Otto 128, the State court decision was not only subsequent to that of the circuit court of the United States, but it was manifest that a section of the law was entirely overlooked, by the State court, which unquestionably made the bonds good in the hands of the bona fide holder.

The circuit court decision, by Emmons, Judge, is only *pro forma*, opposed to the State court decision, and was made after that decision; whilst the present circuit and district judges, who are familiar with the local law of the State, entertain like views, with the State court.

The other side do not bring decision, in cases raising the question, but dictum. For example: They lay great stress on the expression of Judge Caruthers, in the opinion in 1 Sneed 677, that under the constitution, the Legislature had power to delegate taxation to any other agent of the county than the county court.

No such question was involved, and the very reverse has been decided, in repeated instances.

See Keesee v. Civil District, &c., 6 Cold. 127.
Pope v. Phifer, 3 Heisk. 683.
Waterhouse v. Board, &c., of Cleveland Schools, 8 Heisk. 857. Lipscomb v. Dean, 1 Lea 546.

ESTOPPEL.

Mr. Norton was not proposing to buy the county bonds. Nor was that the question before the court. The proposition involved nothing of the kind. It does not appear that the action of the court was caused by what he said in relation to consolidation. What it acted upon was, the written proposition before it. The corporation that he contemplated uniting with, might be worth more or less, as it might, or might not, collect the bonds, but there was no offer to buy the bonds, by his company. Indeed, his company was not even present, in its corporate capacity. His action as a stockholder, he says, was influenced, but nothing is said to his company to influence it. There was no treaty. He was not sent to negotiate even on the subject of consolidation. Nor was he sent or authorized to buy the bonds.

Again, the county court, and the justices, were the mere agents of the county, and had no power, as to this particular matter, to act for, or to bind the county.

The principle invoked to estop the county, notwithstanding the want of power to make the bonds, does not apply to the facts of this case. The county does not own the road. If it had been built under a void contract, for the county, and it had afterwards taken it, as its property, in the absence of any supposed fraud, by the contractor, then, possibly, the county might be held to pay for its value, upon the doctrine relied upon by the other side. But the record presents no such question. It is a fact that the road has long been insolvent; that it has been sold; that preferred creditors bought it; and that it is incomplete, and the stock utterly worthless.

APPENDIX.

1. "An act to incorporate the Nashville and Northwestern Railroad Company" was passed January 22, 1852, expressly provided "that for the purpose of establishing a communication by railroad between Nashville and the Mississippi river, beginning at Nashville and terminating on the Mississippi river, *in Obion county, &c.*"

See Acts of 1851, 2, p.

At the same session of the Legislature which chartered the company, to which the bonds in suit were issued, this Nashville and Northwestern Railroad Company was given the further time of *two* years to get up its subscriptions of stock and "prepare a section for the iron, as required by law."

See Acts of 1857-8, ch. 6, sec. 7, p. 128.

2. "An act to charter the Memphis, Clarksville and Louisville Railroad Company," was passed January 28, 1852. This act provides for "the construction, use and maintenance of a railroad from *Memphis, in Tennessee*, through Clarksville to Louisville."

See Acts of 1851–2, ch. 98, sec. 1, p. 121.

3. "An act to incorporate the Mississippi and Tennessee Railroad Company" was passed December 5, 1853. It provided for the construction of a railroad "from the boundary line of Mississippi *to the city of Memphis.*"

See Acts of 1853-4, p. 34.

4. "An act to incorporate the Great Central North and South Railway" was passed December 5, 1853. It provided for the "construction of a railroad from the State line of the State of Tennessee * * by *way of Memphis*, to the State line of the State of Kentucky, &c."

See Acts of 1853-4, p. 675.

5. "An act to incorporate the Hickman and Obion Railroad Company," chapter 307, sec. 1, it was provided, "That the president, directors and stockholders of the joint stock company already formed to build a railroad from the town of Hickman in the State of Kentucky to the Mobile and Ohio Railroad track, *in the county of Obion in the State of Tennessee, &c.*"

5. "An act to amend the charter of the Nashville and Northwestern Railroad Company," chapter 312, sec. 1, authorized said company to "commence the work on said road where it intersects the Mobile and Ohio Railroad *in Obion county.*"

See Acts of 1853-4, p. 702.

7. "An act to incorporate the Memphis and Charleston Railroad Company," passed February 2d, 1846, provides for a railroad "*between Memphis, Tennessee, and Charleston, South Carolina, &c.*"

8. "An act to incorporate the Mobile and Ohio Railroad Company and the *Tennessee Central Railroad Company* was passed the 28th of January, 1848.

By the 13th section of the Act, the *Tennessee Central Railroad* is required to begin "at Fulton, on the First Chickasaw Bluff, on the Mississippi river," which is in Lauderdale county, and is then to "pursue an eastern course."

See Acts of 1847-8, section 13, page 181.

AN ACT to authorize certain counties to take stock in railroads, and to issue the bonds of said counties for the same.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the counties of Claiborne, Campbell, Anderson, Knox, Montgomery, Stewart, Henry, Gibson, Tipton, Shelby and Madison, shall have the same authority to take stock in railroads and issue their bonds, and shall be subject to the same privileges and restrictions as are granted to the counties of Lawrence, Maury, Williamson, Davidson, Jefferson, Green, Hawkins, Washington, Carter, Sullivan, Grainger and Warren, by an act passed February 28, 1852, entitled, An act to incorporate the Nashville, Franklin and Columbia Railroad Company.

Sec. 2. *Be it further enacted*, That the acts of any of said counties in voting stock in railroads, and to issue county bonds for the same not heretofore provided for by law, shall hereby be declared as valid and binding as though said acts had been strictly in accordance with law. Passed February 18th, 1880.

Acts of 1853-4, p. 279-250.

CHAP. XLV.

AN ACT to regulate county subscriptions for railroad stock.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be lawful for any county court to subscribe stock in the name of the county, until the proposition so to do shall have received the approbation of a majority of all the legal voters of the county.

Section 2. *Be it further enacted*, That the county courts shall determine and decide when the majority of the qualified voters in the county have voted for subscription, and that said county courts shall be governed in ascertaining the number of qualified voters in the county by the vote

given in said county for governor at the election last preceding the election for railroad subscription; provided, the vote cast in the election for railroad subscription shall not be greater than that cast in the election for governor. If greater, a majority of the vote cast shall determine the election

Sec. *Be it enacted*, That before the popular vote herein provided for shall be taken, an actual survey and location of said road shall be made by a competent engineer, under the direction of the railroad company, setting forth the amount of money necessary to build said road, a copy of such estimate to be made on oath, and deposited in the county court clerk's office at least thirty days before the time of such election.

Sec. 4. This act shall not apply to subscriptions of stock heretofore made or to elections heretofore held in any of the counties of this State.

Passed January 24, 1854.

SECTION 50 OF TENNESSEE CODE.

Words used in this Code in the past or present tense include the future. Words importing the masculine gender include the feminine and neuter. The word person includes a corporation. Writing, or written, includes painting or lithography, and any other mode of representing words and letters. Oath includes affirmation. Signature, or subscription, includes a mark, the name being written near the mark and witnessed. The terms lunatic, insane, *non compos mentis*, include all persons of unsound mind.

CODE, SECTION 1338.

In estimating the damages the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner, by reason of the proposed improvement, may be taken into consideration in estimating the incidental damages.

J. C. NEELY
v.
THE STATE. } Opinion.

Neely was regularly summoned as a juror at the January term, 1880, of the criminal court at Memphis. He failed to attend as required and was fined $25, from which judgment of the court he has appealed to this court.

The defence relied on is, that Neely was when summoned, and still is, a director in the Memphis and Charleston Railroad Company, and that the charter granted in 1848 exempts the directors from jury service.

It is admitted that he was and still is a director in said company, and that said company was chartered in 1848, containing the exemption stated, and that Neely believed he was not liable to perform service as a juror.

The court held the provision of the charter granting the exemption inoperative and void, because repugnant to the constitution.

We are of opinion that the holding of his Honor, the judge of the criminal court, is correct. It is an attempt to pass a law for the benefit of individuals inconsistent with the general laws of the land, and purports to grant to individuals who may be directors in said company privileges, immunities and exemptions which are not extended to other members of the community, who may be able to bring themselves within the provisions of such law, contrary to the provisions of article 11, section 8, of the constitution.

Counsel for Neely have cited the case of Hawkins v. Small, 7 Baxter 193, in support of the validity of the